

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 14-10109-WGY
	)	
PAUL R. HINKEL,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE WILLIAM G. YOUNG  
UNITED STATES DISTRICT JUDGE

JURY TRIAL DAY 3

February 17, 2015  
9:22 a.m.

John J. Moakley United States Courthouse  
Courtroom No. 18  
One Courthouse Way  
Boston, Massachusetts 02210

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## P R O C E E D I N G S

THE CLERK: United States District Court is now in session. You may be seated.

THE COURT: Good morning, counsel. I recognize and the record should show that the defendant is not yet present in the courtroom, though we have the jurors. This is in the nature of the sidebar conference; so I thought I could proceed and save time.

After considerable reflection, I've decided to charge on entrapment. That has the consequence of allowing the government to put in their propensity evidence. And my intent is to allow them to put in all the pictures from the computer, including what you call anime, the cartoons, the sketches.

And I guess I put it to defense counsel. I'm responsible for my own rulings, but the way this case has gone in, I have excluded them since I was not of the opinion that propensity evidence was germane, but the defense appears to want the entrapment to be charged to the jury. And on this evidence, I believe it can be argued that the government induced the conduct by -- I'm not saying this is the only argument, but this is the one that persuades me -- that the government induced the conduct by offering the imaginary mother for dominant/submissive sex play as part of the deal to get the imaginary daughter involved.

I draw no conclusions, but on the evidence, that could

1 be argued. That's inducement under the law.

2 So Ms. Peachy, I wanted to come out and say that now,  
3 because the computer witness who authenticates all of these  
4 things is on the stand; and if you're going to press  
5 entrapment, which is your right, we're going to change the  
6 ruling on, I believe it's Exhibit 6, to allow all the photos to  
7 come in and then let you go from there and you should know  
8 before either side rests.

9 MS. FISHER: Your Honor, I understand your ruling.  
09:26 10 Obviously, we still do object. We filed a motion in limine on  
11 this.

12 THE COURT: You did.

13 MS. FISHER: On the fact of those photos coming in,  
14 because even if we are arguing predisposition, we don't think  
15 those photos are evidence of predisposition.

16 THE COURT: I understand your position, but I  
17 disagree. I do not think they are so inflammatory that under  
18 403 they should be excluded.

19 MS. FISHER: I just want to make that objection for  
09:26 20 the record.

21 THE COURT: You're rights are saved. So we're clear,  
22 entrapment is in the case. So now the jury is all ready, just  
23 as soon as we get Mr. Hinkel here, Exhibit 6 now is the entire  
24 Exhibit 6, including the photographs?

25 MR. DE LLANO: Correct, your Honor; and we had

1 previously wrapped up with this witness. Would we be able to  
2 resume this morning?

3 THE COURT: Doesn't it make more sense to resume this  
4 morning in light of my ruling, then give the defense their  
5 complete cross-examination?

6 MR. DE LLANO: That would be our preference.

7 THE COURT: All right. I think you should stand easy,  
8 and we'll press to get Mr. Hinkel up here and get going.

9 MR. DE LLANO: Thank you, your Honor.

09:27 10 THE COURT: We're recessed.

11 (Recess taken 9:26 a.m. to 9:27 a.m.)

12 (Jury enters.)

13 THE CLERK: Court is back in session. You may be  
14 seated.

15 THE COURT: Well, good morning, ladies and gentlemen.  
16 I haven't got the words to thank you. You people got in here  
17 before all the rest of us got in here. And in fact, we don't  
18 have Mr. Romanow. He's stuck in Newton, so we have a wonderful  
19 court reporter, Kelly, and we welcome her to this session of  
09:38 20 the court. Thank you so very much.

21 And you may resume the stand. And if you'll remind  
22 the witness.

23 THE CLERK: I'd like to remind you that you're still  
24 under oath. Do you understand?

25 THE WITNESS: Yes.

1 THE COURT: We wrapped up, but I'm allowing the  
2 government a few more questions of this witness, and then we'll  
3 get to his cross-examination. Mr. De Llano, proceed.

4 MR. DE LLANO: Thank you, your Honor.

5 (PETER MANNING, previously sworn.)

6 DIRECT EXAMINATION BY MR. DE LLANO: (cont.)

7 Q. Good morning, Special Agent Manning.

8 When we left off last week, you described certain  
9 photographs that you discovered on the electronic evidence that  
09:39 10 you examined. In addition to those photographs, did you locate  
11 any other images during your examination of the electronic  
12 media?

13 A. I did.

14 Q. And can you please describe what --

15 A. Sure. In the process of looking for the images that we  
16 exchanged during the investigation with Mr. Hinkel, we came  
17 across some images of interest that needed further review.

18 Q. Do you have the exhibit binder in front of you? If I  
19 could direct your attention to Exhibit 6, page 84.

09:40 20 A. Okay. I'm at page 84.

21 Q. The third image down, is that one of those images?

22 MS. PEACHY: I object, your Honor.

23 THE COURT: Overruled.

24 A. It is.

25 Q. Bring it into focus here. Can you please explain to us

1 the information underneath the image?

2 A. Sure. The first series of digits is the actual file name,  
3 and then the following, the long string is the file path or the  
4 location where you could find that file.

5 THE COURT: So let me stop you right there.

6 Q. The first side of characters and numbers it says Seagate  
7 number 9IVY, just to remind the Court, what specific drive does  
8 that signify?

9 A. Sure. That is the hard drive that came out of  
09:40 10 Mr. Hinkel's work computer.

11 Q. So if you could continue, partition 3, what does that  
12 mean?

13 A. Sure. So as before, hard drives can be broken down to  
14 different sections or partitions. This one is partition 3. OS  
15 stands for the operating system, and the file, TFS, is the type  
16 of file system. The root is the very beginning of that drive.  
17 And if you follow that whole path out, you'll see that that  
18 file ended up in a cache folder for Mozilla Firefox, which is a  
19 browser for the internet.

09:41 20 Q. And I know we went over it last week, but if you could  
21 remind us what it means, what a cache folder is?

22 A. Sure. When a user browses the internet, the software  
23 developers use the cash directory to speed up the browsing  
24 process. So images and other files that may be reviewed again  
25 at the same time or same session are put into a cache folder so



1 they can be recalled quickly instead of back over the internet  
2 like they were originally.

3 Q. If you could turn to the next page, page 8, of Exhibit 6.  
4 Two images that appear on this page, where are those located?

5 A. Again, same hard drive, Mr. Hinkel's work computer. If  
6 you follow the path, you can see the user name there after old  
7 drive, it has Paul H. Archambault; and if you keep following  
8 the path out, that cache ends up back in the Mozilla Firefox  
9 directory.

09:42 10 Q. And once again, what is Mozilla Firefox?

11 A. It's a browser that the user can use to access data over  
12 the internet.

13 Q. Finally, page 86 of the report, these two images, can you  
14 describe -- were those located in the same location?

15 A. In general, yes. They came into the cache directory,  
16 Mozilla Firefox, same hard drive for both of them, yes.

17 Q. In addition to these images, were there any other images  
18 discovered in your review or examination of this computer?

19 A. Yes, we found some images of Mr. Hinkel, what appeared to  
09:43 20 look like he was using some of the items that we had recovered  
21 on the day of his arrest.

22 Q. Can I direct your attention to page 67 of that report.  
23 I'm not going to go through all of images, but was this one of  
24 the images that was discovered?

25 MS. PEACHY: I object, your Honor.

1 THE COURT: Overruled.

2 A. Yes, it was.

3 Q. Could you please tell us where that image was located?

4 A. Sure. It's back on -- it's on Mr. Hinkel's work computer.  
5 This one was found in the recycle bin.

6 Q. And what does it mean to be in the recycle bin?

7 A. The user has chosen to delete the file, but it's not  
8 actually deleted. It's just placed into a directory that will  
9 eventually be deleted.

09:44 10 Q. Special Agent Manning, there are several pages of  
11 pictures. Will you please flip through pages 67 through 82 of  
12 your report and let us know where those images were located.

13 A. All but one came from Mr. Hinkel's work computer, in the  
14 recycle bin.

15 Q. And the other one that did not?

16 A. On page 82, the second image came from Mr. Hinkel's work  
17 computer, but it came from a temporary internet file directory.

18 Q. And what is a temporary internet file directory?

19 A. Works the same way as a cache would for a browser. The  
09:45 20 file would be placed in that directory so it could be recalled  
21 easier during Windows Explorer or Internet Explorer viewing  
22 situation.

23 MR. DE LLANO: No further questions, your Honor.

24 THE COURT: Ms. Peachy.  
25

1 CROSS-EXAMINATION BY MS. PEACHY:

2 Q. Good morning, Agent Manning.

3 A. Good morning, counsel.

4 Q. Just because it's been a few days, I want to go through,  
5 again, all of the items that you examined in relation to this  
6 case; I believe those are listed on the second page of your  
7 report, correct?

8 A. Yes.

9 Q. So you examined an Acer computer. That's a regular hard  
09:46 10 drive, correct?

11 A. The Acer is the actual laptop.

12 Q. That was a laptop computer?

13 A. I believe so.

14 Q. A Hitachi. What was that, a hard drive?

15 A. That's a hard drive, yes.

16 Q. A max store, what was that, a flash drive?

17 A. I believe it was an old hard drive.

18 Q. That's also a hard drive. Two Seagate computers?

19 A. Both hard drives.

09:47 20 Q. Both hard drives. 3C. So one, two, three, four, five,  
21 six computers you examined in this case, correct?

22 A. In this report, yes.

23 Q. Okay. Did you examine other computers?

24 A. We did a quick preview of some of the other items, I  
25 believe, that were detailed that were returned to Mr. Hinkel.

1 Q. So in addition to six computers that you looked through,  
2 you also looked through some other items, correct?

3 A. That's right.

4 Q. And you also, I think you looked through his phone, right?

5 A. No. We didn't have a chance to look through his phone.

6 Q. But there were some other digital or electronic devices  
7 that you looked through in addition to these six computers,  
8 correct?

9 A. That's correct.

09:48 10 Q. And this report that's now marked as -- that's now in  
11 evidence as Exhibit 6, this is actually a summary of your  
12 findings that you prepared for the prosecution, correct?

13 A. That's correct.

14 Q. It's not everything that you found on these six computers,  
15 right?

16 A. That's right.

17 Q. And you did, in fact, do a more complete -- well, at least  
18 a longer report with all of your findings, correct?

19 A. During -- when we did a preliminary report, there is  
09:48 20 provided a section of basically thousands of pages that were  
21 not -- no sense of printing all those out -- but it was a long  
22 listing of certain types of files, internet history, that  
23 didn't make it into this report, that's correct.

24 Q. And that longer report was over 26,000 pages long, just so  
25 we're talking about the same thing, right? Does that sound

1 about right?

2 A. I wouldn't really call it a report. It's more of what the  
3 software itself would produce. It just gives a raw dump of  
4 data. And it's my job to go through and find out what would be  
5 relevant for the report itself.

6 Q. What would be relevant for the prosecution, correct? What  
7 you're going to put in your report, right?

8 A. Correct.

9 Q. And that's the report that you put together that's Exhibit  
09:49 10 6, right?

11 A. Sure.

12 Q. You pulled out pieces that you thought would help the  
13 prosecution and put that into the report that's now Exhibit 6,  
14 right?

15 A. Everything that I thought was relevant to the  
16 investigation made it into this report.

17 Q. Okay. And that longer report -- or I won't call it a  
18 report. That longer data retrieval -- I don't know what else  
19 to call it -- that included, you said, internet history, right?

09:50 20 A. That's correct.

21 Q. Images, correct?

22 A. I believe so.

23 Q. Some that are not in the report, right?

24 A. Mm-hmm.

25 Q. Some that aren't in Exhibit 6, right?

1 A. That's right.

2 Q. Some chats, right --

3 A. Sure, yeah.

4 Q. -- like instant messaging chats, right, you found?

5 So I want to talk about a chat that you found. One thing  
6 you found were some Yahoo Messenger chats, right; is that  
7 right?

8 A. That's correct.

9 Q. Okay. And that's an instant messaging program, right?

09:50 10 A. That is, yes.

11 Q. Okay. I think -- well, hopefully people understand what  
12 that is.

13 Okay. And you found one where Mr. Hinkel is using the  
14 name "funtoday07," correct?

15 A. Yes.

16 MS. PEACHY: May I approach, your Honor?

17 THE COURT: You may.

18 Q. I'm showing you a document there.

19 A. Thank you.

09:51 20 Q. Can you look at it and just tell me if you recognize what  
21 it is.

22 A. (Witness reviews document) So one of the software that we  
23 use is called Internet Evidence Finder, and this is  
24 basically -- again, I wouldn't call it a report because it's  
25 not something I prepared, but it's a raw data dump from that

1 software that I included in the preliminary.

2 Q. And this particular data dump is a data dump of all of the  
3 Yahoo chats that you found on Mr. Hinkel's computer, correct?

4 A. I couldn't say if it was all of them, but it's what we  
5 could recover.

6 Q. Okay. And these were found on the Acer laptop, correct?

7 A. Yes.

8 MS. PEACHY: Okay. Your Honor, at this point I'd move  
9 to introduce that report as Defendant's Exhibit A.

09:52 10 THE COURT: Well, there isn't a "Defendant's Exhibit."  
11 They're just exhibits. Any objection to that?

12 MR. DE LLANO: Your Honor, may I we approach the  
13 sidebar?

14 THE COURT: You may.

15 **SIDEBAR:**

16 MR. DE LLANO: Your Honor, the reason that I've asked  
17 for the sidebar is because I believe the defense is attempting  
18 to show that or use, I assume, an argument that specific  
19 instance where he said, "I would not play with my children" as  
09:53 20 evidence that he didn't do it this time.

21 THE COURT: I guess I don't understand what the --

22 MS. FISHER: There are two reasons.

23 THE COURT: Why don't we want this?

24 MS. FISHER: Well, there are two reasons. Number one  
25 is that an excerpt of this chat is actually in their Exhibit 6,

1 but it doesn't make clear who is which person; and they, as  
2 your Honor may recall, use this as an example before they  
3 figured out who was who.

4 MR. DE LLANO: Just on that point --

5 THE COURT: Wait a minute. Let me just stick with  
6 her.

7 MS. FISHER: In their 404(b) initial letter, they used  
8 this as an example before we figured out who was who that he  
9 had asked the other user, "Have you ever played with your  
09:54 10 children," when in fact it's the other user saying it to him;  
11 and the excerpt of this that is in Exhibit 6 does not make  
12 clear who the users are.

13 THE COURT: Now, wait a minute. Let me say it back to  
14 you. In evidence already now is Hinkel talking about somebody  
15 else all other than the agents, right?

16 MS. FISHER: Talking with a person other than the  
17 agents, an adult, an adult.

18 THE COURT: That's right, right? An adult, other than  
19 the agents.

09:54 20 MS. FISHER: Right. Where the adult, the other  
21 person, asks Hinkel, "Have you ever wanted to play with your  
22 children," and he said, "No."

23 THE COURT: You said that's in evidence already.

24 MS. FISHER: No, but it doesn't make it clear that  
25 Hinkel is the one saying no.



1 THE COURT: All right. In that excerpt, the other  
2 person says, "Have you ever played with your children?" Hinkel  
3 says, "No," right?

4 MS. FISHER: The excerpt that's in evidence doesn't  
5 make it clear who is saying no and who is asking.

6 THE COURT: Well, the excerpt may not, but there's no  
7 dispute about that. That's how the government presented it.

8 MR. DE LLANO: During the pretrial motion.

9 THE COURT: Forget pretrial. What these people have  
09:55 10 heard, these people have heard about a conversation in which  
11 somebody else says to Hinkel, "Have you ever played with your  
12 children," and Hinkel says, "No."

13 MS. PEACHY: No, that's not in evidence.

14 MR. DE LLANO: We took that out, and we have not --  
15 it's not in evidence and they have not heard anything about  
16 that.

17 THE COURT: None of that?

18 MR. DE LLANO: Correct.

19 MS. PIEMONTE-STACEY: Right.

09:55 20 THE COURT: So now you --

21 MS. FISHER: I apologize.

22 THE COURT: That's all right. We're sorting it out.  
23 So you want to put it in that on another occasion to another  
24 person Hinkel said, the point asked, "Do you play with your  
25 children," and he says, "I don't."

1 MS. FISHER: He says, "I would never do that," not  
2 only that it's evidence that he solicited --

3 THE COURT: That's his own children?

4 MS. FISHER: Yes, but, your Honor, in the chats that  
5 are already in evidence, with the mother, he says, "I once  
6 solicited this type of scenario, but to be honest, I asked for  
7 someone who was of legal age."

8 THE COURT: Yes, I recall it.

9 MS. FISHER: It does appear that the person talking to  
09:56 10 him is answering that, and he says, "And how old are you?" She  
11 says, "I'm 41," and he says, "You could still be my girl." So  
12 we're saying, this is not evidence, this is evidence of his  
13 lack of predisposition.

14 THE COURT: I don't think it is. On relevance  
15 grounds, it's excluded.

16 MR. DE LLANO: Thank you, your Honor.  
17 (End sidebar.)

18 THE COURT: Now, just so we're clear, since I didn't  
19 admit that in evidence, that we will give a letter, and the  
09:57 20 letter will be Exhibit A for identification.

21 MS. PIEMONTE-STACEY: Thank you, your Honor.

22 THE COURT: The numbered ones will all be in the jury  
23 room. We already have an A. It will be Exhibit B for  
24 identification.

25 (Exhibit B marked for identification)

1 BY MS. PEACHY:

2 Q. Agent Manning, in those chats that you recovered off the  
3 computer, you never found any evidence that Mr. Hinkel was  
4 communicating with minors, correct?

5 A. Not that we can tell. I mean, the chats are what they  
6 are. They're just words on a page.

7 Q. Right. Okay. And you also showed the jury last time we  
8 were in court the fragments of the e-mails that you recovered  
9 on Mr. Hinkel's work computer. Do you recall that?

09:58 10 A. That's correct.

11 Q. And you were able to retrieve fragments of the e-mails  
12 that he was having with the undercover agent, right?

13 A. That's right.

14 Q. And you recovered those by searching for those e-mail  
15 addresses?

16 A. That's right.

17 Q. But when you recovered those fragments, you also recovered  
18 fragments of other e-mails, correct?

19 A. That's correct, if an e-mail is checked in a browser and  
09:58 20 the fragments come from un allocated part of a drive or a page  
21 file that's more of a temporary file, it can be adjacent to  
22 other data, other e-mails.

23 Q. So you pick up contents of other e-mails with other  
24 people, correct?

25 A. That's correct.

1 Q. And fair to say that some of the other fragments that you  
2 picked up were sexual conversations that Mr. Hinkel was having  
3 with other people, correct?

4 A. Appeared to be, yes.

5 Q. Okay. For example -- can I have the Elmo? Thank you.

6 I think this is, if my page numbers are the same as your  
7 page numbers, this is page 13. You can see there in the middle  
8 of the page an e-mail address that starts "bam," correct?

9 A. Yes, I do.

09:59 10 Q. And then there's a little fragment here. "Yes, sir.  
11 Sorry, sir. It will happen again," correct?

12 A. I see that, yes.

13 Q. Okay. And down at the bottom of the page there's  
14 another -- appears to be another e-mail fragment with that bam  
15 e-mail address, right?

16 A. Yes, I see that.

17 Q. That starts, "Meow," correct?

18 A. That's correct.

19 Q. On the next page, another e-mail fragment picked up with  
10:00 20 this bam. It says, "Master," correct?

21 A. Yes, I see that.

22 Q. Okay. And then further along on the page -- again,  
23 hopefully my page numbers are correct -- on page 17, there are  
24 some e-mail fragments with another e-mail address at the bottom  
25 of the page there, "Sweet mistress for you," correct?

1 A. Yes.

2 Q. It goes on to the top of the next page. "Tell me, Daddy,"  
3 correct? That's part of that e-mail fragment, correct?

4 A. It appears to be, yes.

5 Q. And on page 28, another e-mail fragment with the, "Sweet  
6 mistress for you," it says, "Daddy dom too busy for attention."  
7 Do you see that?

8 A. I do.

9 Q. And there are some other e-mail fragments with other  
10:01 10 e-mail addresses of a similar nature, correct, that were picked  
11 up here --

12 A. Yes.

13 Q. -- contained in Exhibit 6, correct?

14 A. Correct.

15 Q. And none of those e-mails, none of those other e-mail  
16 fragments that you picked up mentioned children, correct?

17 A. I don't believe so.

18 Q. Okay. Or wanting to have sex with children, correct?

19 A. That's correct.

10:02 20 Q. Okay. And you also talked about how part of your  
21 examination of these six computers involved looking at website  
22 history, correct?

23 A. That's correct.

24 Q. On all six computers, right?

25 A. Yes.

1 Q. And it's fair to say you found evidence, you found web  
2 history of adult pornography websites being visited. Do you  
3 recall that?

4 A. I do.

5 Q. Quite a few, correct, different adult pornography websites  
6 being visited, correct, histories?

7 A. That's correct.

8 Q. Correct?

9 A. That's correct.

10:03 10 Q. Do you recall about how many websites it was?

11 A. A lot. I don't recall how many, no.

12 Q. And you found images of adult pornography, correct?

13 A. Correct.

14 Q. A lot, again?

15 A. A lot.

16 Q. Okay. But again, that's not included in your prosecution  
17 summary in Exhibit 6, correct?

18 A. It wasn't -- it's not -- it wasn't part -- it's not a  
19 criminal act. There's nothing criminal about looking at adult  
10:03 20 pornography.

21 THE COURT: Keep your voice up. It's not a criminal  
22 act, and what did you say?

23 A. It's not a crime to look at adult pornography.

24 Q. Right. In all of that web history, you didn't find any  
25 evidence on any of the six computers of Mr. Hinkel visiting any

1 child pornography websites, correct?

2 A. Well, we went through it and saw some of the animae  
3 earlier, some of the images.

4 Q. But you don't know what website those came from, correct?

5 A. That's correct.

6 Q. And one thing you were looking for specifically in the  
7 website history --

8 A. Mm-hmm.

9 Q. -- is whether he's visited any child pornography websites,  
10:04 10 right?

11 A. That's right.

12 Q. And he hadn't, correct?

13 A. Not that we could find.

14 Q. Not in any of the six computers that you looked at, right?

15 A. That's right.

16 Q. Not even any websites about pedophilia or where you might  
17 go to meet children or talk to children, correct; nothing like  
18 that?

19 A. No.

10:04 20 Q. And you mentioned these animae pictures and the fact that  
21 they were found in a web cache file, right?

22 A. That's right.

23 Q. All -- I forget how many -- four of them or whatever, five  
24 of them, were found in the Firefox web cache file, right?

25 A. That's right.

1 Q. And as I just said, you have no idea what website they  
2 came from, right?

3 A. I don't.

4 Q. And in fact, when you looked at the web history, there was  
5 no evidence of any child pornography-type websites being  
6 visited, correct?

7 A. That's right.

8 Q. So they could have come from a website that had adult  
9 pornography on it?

10:05 10 MR. DE LLANO: Objection. Speculative.

11 THE COURT: Would you ask the question again? That's  
12 my fault.

13 Q. So those images could have come from a website that had  
14 adult pornography on it?

15 THE COURT: Well, do you know?

16 THE WITNESS: I don't know what site they came from.

17 THE COURT: Well, that's his answer.

18 Q. Okay. You just don't know what website they came from.  
19 You don't know when that website might have been visited,  
10:05 20 correct?

21 A. I don't.

22 Q. You don't know, even though they were found on  
23 Mr. Hinkel's work computer, you don't know who had access to  
24 his work computer or who used his work computer, correct?

25 A. That's true.



1 Q. Especially because you can't even narrow down when those  
2 images were put into the cache file, correct?

3 A. That's correct.

4 Q. And when an image shows up in a web cache file, that is  
5 without the user ever doing anything, right, except being on a  
6 website that has that image on it?

7 A. Well, the user navigates to that page and views the actual  
8 page, and that's how the files end up in the cache.

9 Q. Okay. But they don't have to save the image, right?

10:06 10 A. It's not a conscious decision to save a file into the  
11 cache directory, no.

12 Q. So somehow you are on a website; and you don't know, for  
13 example, if whoever is looking at this website that has these  
14 images there gets there by accident or on purpose, right?

15 A. No, you can't tell that.

16 Q. You can't recreate the path that they took to get to that  
17 image, right?

18 A. I'm sorry. Path?

19 Q. You can't like the -- what websites they clicked on to get  
10:06 20 to that image, you can't recreate that, right?

21 A. No.

22 Q. And once they're on that web page and, again, we don't  
23 even know what web page this is, so we don't know what other  
24 images there may be on that page, right? I'm sorry, you have  
25 to say --

1 A. Correct. Yes, sure.

2 Q. It just automatically puts a file into the web cache  
3 without the viewer doing anything, right?

4 A. It's part of the process for the browser to download data.

5 Q. But you don't do anything; you're just visiting this  
6 website, and the image automatically goes into the cache file  
7 without the user doing anything?

8 A. I guess I disagree with the user not doing anything  
9 because they navigate to that page, and just part of the  
10:07 10 process of the browser itself is to actually download those  
11 images from the internet.

12 THE COURT: Now, in this instance, it's perfectly  
13 appropriate for her to ask questions that suggest things. "You  
14 were wearing a red hat, weren't you?" That's how you can  
15 question a witness on cross-examination. But the evidence is  
16 what the witness says. If the witness says something else,  
17 then, like any witness, it's up to you whether you believe it,  
18 disbelieve it, believe parts of it, but that's the evidence,  
19 not what the questions may suggest.

10:07 20 Go ahead, Ms. Peachy.

21 Q. You keep saying the word "navigate to the page," but  
22 again, you don't know if it was -- you don't know who got to  
23 that page, who was looking at that page, right?

24 A. No.

25 Q. And you don't know, again, what if there was a path, a

1 deliberate path taken to get to that page, correct?

2 A. I guess I use "navigate" in the general term because the  
3 user is actually using that browser to view what that content  
4 is on that page. So maybe navigate is a bad term for it. But  
5 using the browser to view that content, that now appears in the  
6 cache folder.

7 Q. And when you're examining all of these six computers,  
8 you're obviously looking for any images of child pornography,  
9 correct?

10:08 10 A. Not directly. I mean, our job was to look for evidence of  
11 the crime. And as part of that, we're looking for all images  
12 related to the investigation that could include child  
13 pornography. We're always keeping our eye open for it. But  
14 for this instance, I was mainly looking for images involved in  
15 the investigation exchanged between Mr. Hinkel and the  
16 undercover, or other images involved in the investigation.

17 Q. Okay. So when you're looking at these six hard drives and  
18 you're kind of casually looking to see if any child pornography  
19 pops up, on all six computers, there are no images of child  
10:09 20 pornography found?

21 A. Not that I recall.

22 Q. Correct?

23 A. Nope.

24 Q. Not in the web cache file, not anywhere, correct?

25 A. No.

1 MS. PEACHY: I have nothing further.

2 THE COURT: Any redirect?

3 MR. DE LLANO: Briefly, your Honor.

4 REDIRECT EXAMINATION BY MR. DE LLANO:

5 Q. Special Agent Manning, you testified during  
6 cross-examination that you didn't have a chance to look at --

7 THE COURT: I didn't hear. Keep your voice up.

8 MR. DE LLANO: I apologize.

9 Q. You testified during cross-examination that you didn't  
10:10 10 have a chance to look at the defendant's phone. Why not?

11 A. That's correct. As part of the investigation, we would  
12 definitely do a forensic analysis on a cellphone. Mr. Hinkel  
13 provided us with a pass code for his phone the day of his  
14 arrest. It was unlocked at the time of his arrest. However,  
15 when we got back for analysis, the pass code was incorrect and  
16 wouldn't unlock the phone. And because of some of the setup  
17 for the phone itself and the way it was configured, we were  
18 unable to do a forensic, full forensic analysis on the phone  
19 itself.

10:10 20 Q. Now, turning to the discussion about cache, if you could  
21 please turn to page 86 of Exhibit 6.

22 A. 86.

23 Q. What was the hard drive this was found on?

24 A. Which image? I'm sorry.

25 Q. Either one.

1 MS. PEACHY: Objection, your Honor. This has already  
2 been asked.

3 THE COURT: It has been, asked and answered.

4 Q. All right. Is there a user identified in that string of  
5 characters underneath the images?

6 A. Yes. As I was explaining about the path, it starts with  
7 the hard drive; and you can see as you progress through, the  
8 user is Paul.h@archambault.

9 MR. DE LLANO: No further questions.

10:11 10 THE COURT: Anything further for this witness?

11 MS. PEACHY: No, thank you, your Honor.

12 THE COURT: You may step down. Thank you. Is that  
13 the government's case?

14 MR. DE LLANO: The government calls Christopher  
15 Diorio.

16 (CHRISTOPHER DIORIO, sworn)

17 DIRECT EXAMINATION BY MR. DE LLANO:

18 Q. Good morning, sir. Would you please state and spell your  
19 last name for the Court.

10:12 20 A. Yes. It's Christopher Diorio, D-i-o-r-i-o.

21 Q. Sir, are you currently employed?

22 A. I'm a special agent with the Department of Homeland  
23 Security, Homeland Security Investigations.

24 Q. Are you assigned to any particular group or division  
25 within Homeland Security Investigations?

1 A. Yes, I am. I am assigned to the child exploitation/cyber  
2 crimes group.

3 Q. How long have you worked for the Department of Homeland  
4 Security?

5 A. For approximately 13 years.

6 Q. Prior to working as a special agent with HSI, how were you  
7 employed?

8 A. I was assigned to the United States Coast Guard tactical  
9 law enforcement team that specialized in international  
10:13 10 narcotics.

11 Q. Would you please describe generally what your duties and  
12 responsibilities are as a special agent with Homeland Security  
13 Investigations?

14 A. Yes. We're charged with investigating complex criminal  
15 organizations and dismantling said organizations.

16 Q. Sir, were you involved in the investigation that led to  
17 the charges against the defendant?

18 A. Yes, I was.

19 Q. Would you please describe what your involvement was.

10:13 20 A. I was aware of the investigation from its start, but I  
21 didn't participate in the investigative aspect of the case. I  
22 was brought in more specifically towards the end of the  
23 investigation to help with the planning of the actual meet  
24 between our undercover officer and the target.

25 Q. Were you involved on March 19, 2014?

1 A. Yes, I was.

2 Q. And what were your duties on that day?

3 A. As part of that planning and part of the execution of the  
4 actual meet with the undercover agent and the target, I was set  
5 up in the parking lot outside of an apartment complex in  
6 Watertown, Massachusetts.

7 Specifically, my job or my role was to be inside of what  
8 we call the cover vehicle. I was in the back of a minivan with  
9 several other agents, and our job was to both maintain and  
10:14 10 eyeball a visual of the target as he arrived at the location  
11 and be available in case something went wrong to provide cover  
12 for the undercover agent if something did, in fact, go wrong.

13 Q. What time did you arrive at that parking lot,  
14 approximately?

15 A. Earlier that morning. I'd say 9:00, maybe 8:30.

16 Q. Could you please describe what, if anything, you observed  
17 that morning?

18 A. Yes. We arrived at the parking lot and we parked sort of  
19 towards the back so that we could see the entrance into the  
10:15 20 parking lot. I was, as I mentioned, in the minivan but not  
21 driving. We were listening to the surveillance of the target  
22 from our aircraft and from our other units on the ground,  
23 surveillance units. So we were aware of roughly, if not very  
24 specifically, where he was at any given time as he was  
25 approaching our location. As I mentioned, this was our job, so

1 as he pulled closer and pulled up onto a street just outside  
2 the apartment complex, he parked his vehicle just outside. And  
3 as I heard on the radio that that was happening, I instructed  
4 the person driving the van to go ahead and pull out of our spot  
5 and move to a position much closer to the door so that we could  
6 get a visual on the truck that the target was driving as well  
7 as the door and be closer if we were needed.

8 Q. And did you get a visual?

9 A. Yes, I did.

10:16 10 Q. At what point did you arrive at that vehicle?

11 A. Sure. So as soon as I instructed the person who was  
12 driving the van to pull up towards the entrance, then we kind  
13 of came around a little bit of a corner and I was able to see  
14 the back of a truck. At that point, I saw the defendant near  
15 the back of his truck and coming around towards the sidewalk to  
16 head towards the apartment door, the outer apartment door that  
17 we expected him to go into.

18 Q. Is the person that you saw that morning in the courtroom  
19 today?

10:16 20 A. Yes, he is.

21 Q. Would you please point that person out and describe what  
22 they're wearing.

23 A. Yes. He's the defendant. He's in a suit wearing a tie at  
24 the defendant's table.

25 MR. DE LLANO: May the record reflect the witness has



1 identified the defendant?

2 THE COURT: It may.

3 Q. So Agent Diorio, what, if anything, did you observe after  
4 you saw the defendant leaving his vehicle or walking away from  
5 his vehicle?

6 A. As he walked away from his vehicle and up the sidewalk  
7 towards the outer apartment door, I just noted what the  
8 defendant was wearing, which I was already aware of based on  
9 the earlier surveillance and was able to confirm it; and I also  
10:17 10 noticed the defendant was carrying some sort of shoulder bag or  
11 backpack or something as he walked into, as I mentioned, the  
12 outer door of the apartment complex.

13 Q. At that point, what, if anything, did you do?

14 A. As he walked into the outer door of the apartment complex,  
15 there were other agents on the inside. Once the defendant was  
16 taken into custody, we, as I mentioned, were very close to the  
17 door. And when we realized that we weren't needed, we parked  
18 the minivan in a parking spot closest to the door, and I exited  
19 the van at that point.

10:17 20 I instructed a few of the surveillance agents and the  
21 current team that were with me to secure the defendant's  
22 vehicle. By "secure," I mean pretty much stand around it to  
23 make sure that nothing changes or nothing happens to it. Then  
24 I went into the apartment where the defendant was taken into  
25 custody.

1 Q. And when you arrived inside the apartment, what happened?

2 A. By that point, the defendant was already in a separate  
3 room, I believe it was a bedroom, but there was no bed or  
4 furniture really in it, and was speaking to the two lead  
5 investigators at that point.

6 Q. And what did you do?

7 A. When there was a sort of a logical break in their  
8 conversation, I told them that we had the car secured and that  
9 if we -- if there was going to be consent to search the car,  
10:18 10 they could just let me know. Ultimately, they did do that.  
11 They had the defendant sign a consent form, which they provided  
12 to me along with the keys for the vehicle. I took that consent  
13 form and the keys and went out to the vehicle and instructed  
14 the agents that had been previously securing the vehicle to go  
15 ahead and begin searching it.

16 Q. Had you personally searched the truck?

17 A. I was there and watched and looked into the truck as it  
18 went. But as far as actually taking things out of the truck,  
19 no. It was the other agents that were standing around that I  
10:19 20 instructed who searched it.

21 Q. Okay. So how did you obtain access to the inside of the  
22 truck?

23 A. The keys were provided to us by the case agent along with  
24 the consent form.

25 Q. Do any of these keys access all areas of the truck?

1 A. No, they did not.

2 Q. What area was not accessible through those keys?

3 A. As we searched the truck, we became aware of a lockbox in  
4 the bed of the pickup truck that was locked, in fact. And none  
5 of the keys on the key ring provided to us opened that lock  
6 box.

7 Q. So what did you do at that point?

8 A. At that point I walked back into the apartment, informed  
9 the case agents again. And I heard them go into the room and  
10:19 10 they asked the defendant about the lockbox and the keys for the  
11 lockbox. And I heard the defendant's reply direct, which was  
12 that the keys were placed in the back seat under a mat in the  
13 back portion of the cab.

14 The case agents then came out and told me that, but I had  
15 heard it direct as well. I went outside, went directly to that  
16 spot that the defendant had mentioned to us, and there were the  
17 keys that opened up the lockbox.

18 Q. And were you able to open that lockbox?

19 A. Yes, we were.

10:20 20 Q. And what, if anything, did you find inside that lockbox?

21 A. We found several items in there, to include sex toys, and  
22 we found a wig, a lot of camera equipment. Some other things  
23 you would expect to see in a lockbox, such as like jacks and  
24 tools and stuff to that effect.

25 Q. What did you do with the items that you found?

1 A. Well, we pulled the items out of the box. We looked  
2 through. Had some plastic bags in there. We looked through  
3 the items; and anything that we deemed relevant towards our  
4 child exploitation investigation, we took into custody and we  
5 seized.

6 MR. DE LLANO: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. Special Agent Diorio, I'm handing you what has been marked  
9 for identification purposes only as Exhibit 5. Do you  
10:21 10 recognize Exhibit 5?

11 A. Yes, I do.

12 Q. And what do you recognize it to be?

13 A. These are the three bags that were filled with -- three of  
14 the bags that were filled with items that we seized from the  
15 defendant's pickup truck that day.

16 Q. How do you know that those are the same bags?

17 A. Well, as I look at the bags here, I can see that they have  
18 names, dates. Two of the bags have exactly what's in them, and  
19 it has the names of the people, the two officers that I  
10:22 20 instructed to search the vehicle written right on the bags.  
21 Also has a case number that I know reflects this particular  
22 investigation.

23 Q. And do you recognize the contents of those bags?

24 A. Yes, I do.

25 Q. And are they in the substantially same condition they were

1 on March 19, 2014?

2 A. Yes, they are.

3 MR. DE LLANO: Your Honor, at this point I ask that  
4 Government Exhibit 5 be entered into evidence.

5 THE COURT: Any objection?

6 MS. PEACHY: Yes, your Honor, pursuant to my motion.

7 THE COURT: Yes. Your rights are saved. Overruled.  
8 The items may be admitted. Exhibit 5 is now in evidence.

9 (Exhibit 5 received in evidence)

10:23 10 Q. Mr. Diorio, would you please identify the items that were  
11 recovered from the defendant's toolbox?

12 A. Yes. This first bag appears to be or is a bag of sex  
13 toys, to include three, possibly four, phallic toys and one  
14 sort of baster-type device.

15 Q. Anything else?

16 A. Yeah. The other bag has like a pink tutu sized to fit  
17 children three and up, along with several pairs of underwear,  
18 to include -- most of them are princess-themed underwear, all  
19 with sizes around -- they all appear to be size 8. And again,  
10:24 20 there's one, two, three, four, five, six, seven pairs of  
21 princess underwear size 8.

22 There's other articles of clothing here that appear to be  
23 women's articles of clothing, size large, 10 and 10/12, some  
24 bathing suits, underwear in here. This bag has the wig that I  
25 referenced earlier, along with a strap; this actually appears

1 to go with one of the sex toys that I mentioned earlier. I  
2 think they go as a set, from looking at them. Pantyhose, some  
3 wipes and makeup. There's also some paperclips, two of them,  
4 that we seized from the bag.

5 THE COURT: The way you identify those things is from  
6 recognizing them and seeing the nomenclature on the bags. Have  
7 I got it right?

8 THE WITNESS: That's correct, your Honor.

9 THE COURT: Why don't you put them back in the bags  
10:25 10 that you brought them or that were given to you on the stand  
11 rather than putting them all together. And then as you fill  
12 the bag with what was in it, as it was brought to you on the  
13 stand, let's let the clerk collect it. All right?

14 THE WITNESS: Absolutely, your Honor. I kind of kept  
15 them separate so that would be easier.

16 THE COURT: I'm telling you that so the jury can have  
17 them in the manner that they were handed to you. That's all.  
18 Let me see that first bag for a moment.

19 You're done with the identifications?

10:26 20 MR. DE LLANO: I'm done.

21 THE COURT: Come to the sidebar.

22 **SIDEBAR:**

23 THE COURT: I just have a practical problem. The  
24 defense's rights are saved. So he's given three bags. He  
25 identifies what's in them. What's in them is the evidence.

1 This, for example, description is not evidence. And so I have  
2 problems, unless you're not going to object, sending this back  
3 to the jury. Now, we could do it -- well, do you object?

4 MS. PEACHY: I would prefer if perhaps we could just  
5 put Exhibit 5 into a box that doesn't have any labeling.

6 THE COURT: I'd just as soon keep them in the three  
7 bags as the government handed them to him.

8 MS. PEACHY: Sure.

9 THE COURT: Because I think that might make the record  
10:27 10 better. Why don't we do this. Why don't we get three blank  
11 bags. By "blank bags," I mean like shopping bags, not Homeland  
12 Security bags. You take the exhibits from one bag, under the  
13 clerk's supervision, and put it in an unmarked bag and saving  
14 the defendant's rights against my initial rule, that's how  
15 we'll handle it.

16 MS. PEACHY: Thank you, your Honor.

17 (End sidebar.)

18 MR. DE LLANO: Your Honor, I have no further questions  
19 for the agent.

10:28 20 THE COURT: Do you wish to have these while you  
21 examine him?

22 MS. PEACHY: I think so, Your Honor.

23 THE COURT: Fine. The clerk then will pass it back.  
24 I'm just trying to keep things -- you're the judge of  
25 everything here, the jury. But when these items got in his

1 hands here this morning, the lawyer brought up three bags, and  
2 I'd just as soon keep things in the same bags as they were in.

3 I'll tell you so you're not surprised over at the  
4 sidebar that the bags have writing on it, "Homeland Security"  
5 and the like. We don't need that. We're going to get some  
6 blank bags. But you will get the three bags with the items  
7 because it's the items that are the evidence. Those will be in  
8 the jury room when you get the case, and together they're  
9 Exhibit 5.

10:29 10 Ms. Peachy, go ahead.

11 CROSS-EXAMINATION BY MS. PEACHY:

12 Q. Agent Diorio, I have a few questions for you.

13 In those bags, you didn't find any Abercrombie & Fitch  
14 clothing, correct, that you recall?

15 A. I'd have to look through everything. I don't specifically  
16 remember Abercrombie & Fitch.

17 Q. Okay. Do you recall any Victoria's Secret Pink brand  
18 clothing?

19 A. May I look through the exhibit?

10:29 20 Q. You may, yes.

21 A. Yes, there does appear to be a pair of underwear labeled  
22 Victoria's Secret Pink.

23 Q. Are there any other Victoria's Secret Pink clothing?

24 A. I don't see labels on everything, but there does not  
25 appear to be any other Victoria's Secret Pink logo.



1 Q. Okay. And you didn't find any shoes, right? We know  
2 that, you didn't find any high-heeled shoes, correct?

3 A. In the bags, no.

4 Q. In the truck?

5 A. Not that I recall.

6 Q. Okay. And you mentioned on direct examination that there  
7 were some cameras in Mr. Hinkel's truck, right?

8 A. That's correct.

9 Q. And these were seized by you, right?

10:31 10 A. That's correct.

11 Q. And they were turned over for forensic examination,  
12 correct?

13 A. That is correct.

14 Q. By Special Agent Manning, right?

15 A. I believe he did the forensics on this case.

16 Q. And are you aware that he didn't find anything, any sexual  
17 images at all, any images of children on those cameras?

18 A. No. Unfortunately, I didn't know the results of the  
19 forensics in this case.

10:31 20 Q. In front of you is a binder. And I know -- sorry. Things  
21 are getting a little crowded up there.

22 A. Sure.

23 Q. But I know up there, somewhere under there is a binder.  
24 I'm going to ask you to look at what's already been marked as  
25 Exhibit 6 which is right there in front of you, okay?

1 THE COURT: Do you still want him to have the --

2 MS. PEACHY: I do, your Honor, because I'm going to  
3 ask him some questions about some of the pictures.

4 THE COURT: You go right ahead.

5 Q. Again, I hope my page numbers are the same as the page  
6 numbers on the exhibit. But towards the end of that exhibit,  
7 page 67, I believe it is, you'll see a picture of Mr. Hinkel.

8 A. Okay. I do see a picture of the defendant on here.

9 Q. Okay. And you see that he's wearing a white headband in  
10:32 10 that photograph?

11 A. Yes.

12 Q. And that white headband is contained in the items that you  
13 found in his truck; is that correct? Do you recognize that? I  
14 believe it's right there, right?

15 A. Yes, it appears to be the same headband.

16 Q. Okay. And that pink skirt that Mr. Hinkel is wearing in  
17 that photograph, is that that skirt?

18 A. It would appear to be this skirt.

19 Q. Okay. Is that the skirt that says -- this one doesn't  
10:33 20 have a label, correct? It's the other one that has a label,  
21 okay.

22 And he's wearing a pair of turquoise underwear, correct,  
23 in this photograph? I'm sorry. It's the one before this.  
24 He's wearing this in this photograph, page 67?

25 A. Yes.

1 Q. He's wearing a pair of turquoise underwear; and that's  
2 this pair of underwear that Mr. Hinkel is wearing, correct,  
3 with the yellow ribbon?

4 A. You know, it's tough to tell. It's got the same bow ties  
5 on the top, but this one has, you know, has a border on the  
6 top, and the one in the picture doesn't appear to have a  
7 border. So I'm not saying it's not the name. I just can't  
8 tell.

9 Q. It's hard to tell.

10:33 10 A. Yes.

11 Q. On the next page there are a couple more photographs on  
12 page 68 of this Exhibit 6. And again, the top image is a man  
13 wearing this pink ruffled skirt, correct?

14 A. Yes. It appears to be the same one.

15 Q. And some black thigh-high pantyhose, correct?

16 A. Yes.

17 Q. And you found, I think it's in this bag, there's some  
18 black thigh-high pantyhose. Do you recall that --

19 A. Yes.

10:34 20 Q. -- without digging through?

21 A. Yes.

22 Q. The bottom of that page, 68, another image clearly of  
23 Mr. Hinkel, correct?

24 A. Yes.

25 Q. And in that one he's wearing a different pink skirt,

1 correct? With the satin sash, correct?

2 A. Again, I can't tell from there because, again, the ribbon  
3 on this one looks much more substantial than this one, but it  
4 could be the same one.

5 Q. Okay. And Mr. Hinkel, in that photograph, appears to be  
6 wearing lipstick and makeup, correct?

7 A. I suppose so.

8 Q. And you found lipstick and makeup, correct?

9 A. Yes, we did. We found makeup.

10:35 10 Q. On the next page, on 69, in the image of Mr. Hinkel at the  
11 bottom of that page, he appears to be wearing a wig?

12 A. That is correct.

13 Q. Similar to the wig that you found in the back of his  
14 truck, correct?

15 A. Yes.

16 Q. He's wearing a black sheer skirt in that picture, correct?

17 A. Yes.

18 Q. Similar to the black sheer skirt you found in the back of  
19 his truck, correct?

10:35 20 A. Yes.

21 Q. A black bra, correct; he's wearing a black bra in that  
22 picture?

23 A. Yeah.

24 Q. Which was also among the items that you found in the back  
25 of his truck?

1 A. Yes. Looks kind of like a tube top thing.

2 Q. A strapless bra?

3 A. I think it's actually -- I'm not really sure what it is.

4 Q. Okay. And turning to page 75 of that Exhibit 6, it's  
5 again a picture of Mr. Hinkel, correct?

6 A. Yes.

7 Q. And again wearing the white headband, right?

8 A. Yes.

9 Q. And the black tube top or whatever it is?

10:36 10 A. I think it's like a skirt pulled up over his chest.

11 Q. But that was in -- was that amongst the items that you  
12 found in his truck, something like that? This maybe?

13 A. It could be. It's so dark. I can't tell with the  
14 pattern, but it could have been this.

15 Q. On the image on page 75, he appears to be wearing a pair  
16 of red underwear, correct?

17 A. Yes.

18 Q. And you found a pair of red underwear similar to that in  
19 the back of his truck, correct?

10:36 20 A. Yes, we did.

21 Q. And again he appears to be wearing makeup in that  
22 photograph, correct?

23 A. Yes.

24 Q. And the underwear, did you notice that some of these have  
25 rips in them around the seams, for example, right there?

1 A. Yes.

2 Q. Around the elastic on the leg, correct?

3 A. Yes.

4 MS. PEACHY: I have nothing further.

5 THE COURT: Anything further, Mr. de Llano?

6 MR. DE LLANO: Not from the government, your Honor.

7 THE COURT: I want to take a moment, for me, and put  
8 things back in the bag out of which they came. Does the  
9 government have further evidence or does the government rest?

10:37 10 MR. DE LLANO: No, your Honor. That's it.

11 THE COURT: The government rests. Defense?

12 MS. PEACHY: We have a motion, your Honor.

13 THE COURT: I'll hear you.

14 **SIDEBAR:**

15 THE COURT: The defense makes, properly, a motion for  
16 judgment of acquittal at the close of the government's case.  
17 I'm disposed to deny it, but I'll allow it in part. I don't  
18 think it's there to the jury on the theory of indecent assault  
19 and battery because the pitch here was willing, and I think the  
10:38 20 rest of it is straightforward.

21 All right. Motion is denied. Do you want it put  
22 on --

23 MS. PEACHY: No, your Honor.

24 THE COURT: Then fine. We will treat this motion as  
25 renewed at the close of all the evidence. I will tell the jury

1 that's all the evidence they're going to have. I'll give them  
2 a break now for 20 minutes. We'll talk about the charge and  
3 come back.

4 (End sidebar.)

5 THE COURT: All right, ladies and gentlemen. That's  
6 all the evidence that's going to be presented to you in this  
7 case. We're at least, as far as time goes, on track. What  
8 happens now is I need to talk with the lawyers about how I'm  
9 going to charge you. You've heard my general instructions at  
10:39 10 the beginning about how I'm going to charge you.

11 And we'll give you a recess until 11:00, and we expect  
12 to have this case in your hands probably by 1:00 this afternoon  
13 or thereabouts. And I told you that today we expect you to be  
14 with us all day.

15 Now, though you have heard all the evidence, continue  
16 to keep your mind suspended and naturally don't start talking  
17 about the case among yourselves. You'll be back there, so I  
18 don't know if there's anything else to talk about. But don't  
19 talk about the case with anyone.

10:40 20 Now, this keeping your mind suspended still and not  
21 beginning to talk is very important because there are two vital  
22 parts of the case that remain to be heard. The lawyers now --  
23 none of it's evidence. The lawyers now get a chance to stand  
24 before you and sum up, to argue to you the conclusions that  
25 they want you to draw from the evidence that you've seen and

1 heard. Now that is a terribly important part of the case. So  
2 don't start talking about the case now, and don't start making  
3 up your mind until after you've heard the skilled attorneys  
4 marshal this evidence, make arguments about what it shows or  
5 fails to show.

6 And then when they're done, I'll be back; and again, I  
7 will explain to you the law but now with some more precision  
8 because I've presided over the case, as you've been listening  
9 to it. So I can be a little more precise in explaining to you  
10:41 10 what it is that the government has to prove here beyond a  
11 reasonable doubt; and you'll have that in mind, that the burden  
12 of proof rests and stays upon the government. So keep your  
13 mind suspended. Do not discuss the case either among  
14 yourselves, nor with anyone else. You may stand in recess  
15 until 11:00, and I'll remain on the bench.

16 (Jury exits.)

17 THE COURT: Please be seated. Let me just say again.  
18 I think I said it at the sidebar, but I want to be clear. The  
19 defense has renewed its motion for judgment of acquittal at the  
10:42 20 close of all the evidence. The Court has denied it; allowed it  
21 in part, as explained at the sidebar, but otherwise denied it.  
22 And the defense's right is saved following the receipt of the  
23 verdict.

24 Now, as to the charge, in essence, you've heard it. I  
25 want to say two additional items about it, and then I will ask



1 for questions. I do propose -- well, maybe I should say more  
2 than that. Let me go through the defense very quickly. Well,  
3 I'm going to touch on the presumption of innocence, as I did  
4 before, at the start of the trial, emphasize that proof beyond  
5 a reasonable doubt rests on the government. I'm not going to  
6 define reasonable doubt. I will repeat it often.

7 I will give request number 3 in my language, but I'll  
8 make mention of the fact and try in a positive way. I'm not  
9 making mention of the indictment because I'm not sending the  
10:43 10 indictment. When we get to the substance, you have heard my  
11 charge, and there's no reason to change that. I think it was  
12 accurate. However, I am going to give defense instructions  
13 number 9, perhaps not in -- I am going to emphasize that the  
14 communication must be enticing the minor. I think that is the  
15 law. The rest of it I think is all the same.

16 I will give not the defense entrapment charge, but I  
17 will give the guideline charge on entrapment in the First  
18 Circuit, the First Circuit guideline book.

19 Questions on the part of the government?

10:45 20 And of course the order of argument is established by  
21 the rules. Government will argue first and then the defense  
22 will argue. No more than half an hour a side. I don't invite  
23 you to take a half an hour because the case, though a very  
24 triable case, is a straightforward single investigation, single  
25 incident case.

1 I do want to say a word about government rebuttal. It  
2 best be real rebuttal. I'll give you about two minutes of  
3 stem-winding, arm-waving, but everything else had better be,  
4 "They argued this, but remember that." You can do it better  
5 than that, but it has to be true rebuttal. You don't get two  
6 chances to close. And if I think you are trying to make a  
7 second closing, I'll crown you.

8 Now, questions on the part of the government?

9 MS. PIEMONTE-STACEY: Your Honor, in the preliminary  
10:46 10 instruction, I just can't recall whether you gave the  
11 pre-charge that the internet was a means of method or  
12 interstate commerce.

13 THE COURT: I don't know if I used those words, but I  
14 will.

15 MS. PIEMONTE-STACEY: Thank you, your Honor. And I  
16 think both parties have both requested a persuade, induce,  
17 entice definition. The government, of course, proposed that  
18 the terms aren't defined in the statute, and the jury may use  
19 the common sense understanding of the terms to determine  
10:46 20 whether the defendant was the --

21 THE COURT: I propose to do that, but I'm going to use  
22 the word -- though I'm picking another word out of the statute,  
23 "entice" is to lure. Again, I will use the words "persuade,"  
24 "induce," "lure," as roughly equivalent to "entice," yes, I'm  
25 going to say that. And they can use their plain and ordinary

1 understanding of those words.

2 MS. PIEMONTE-STACEY: And I believe this is the last  
3 question I have, your Honor. I do remember on the pre-charge  
4 you gave an instruction how the government is permitted to  
5 subterfuge, a false identification --

6 THE COURT: That will be part of the entrapment  
7 instruction.

8 MS. PIEMONTE-STACEY: What the government requested,  
9 and I'm not sure if that was given in the pre-charge, your  
10:47 10 Honor, is the failure to accomplish the intended act to be  
11 immaterial. In other words, the fact that he didn't go there  
12 and didn't actually have sex with the --

13 THE COURT: That will be covered by attempt. This is  
14 an attempt case. The fact that it was a legal impossibility  
15 makes no difference. I'll talk about attempt in his taking a  
16 substantial step toward the accomplishment of the crime.

17 MS. PIEMONTE-STACEY: That concludes --

18 THE COURT: Defense?

19 MS. FISHER: Yes, your Honor. With regard to the  
10:47 20 entrapment instruction, your Honor, we don't think that the  
21 pattern instruction accurately lays out sufficiently the  
22 inducement because it's more geared to inducement that is more  
23 traditional, and I would ask your Honor to give --

24 THE COURT: "Inducement" is, the language here is that  
25 the government did not persuade or talk Mr. Hinkel into

1 committing a crime. I'm going to give that. That's what it  
2 says.

3 MS. FISHER: As examples, I think the --

4 THE COURT: I'm not disposed to give examples.

5 MS. FISHER: Your Honor, I would ask your Honor to  
6 give the portion of the instruction that we referenced from the  
7 case of *United States vs. Young* from the Eighth Circuit.

8 THE COURT: Yes. Let me find it here, specifically.  
9 Where is it?

10:48 10 MS. FISHER: I'm sorry. It's on page 17 of our  
11 proposed instructions. "Some of the inducement factors  
12 relative to enticement of a minor to engage in sexual activity  
13 may include whether the government made the initial contact."

14 THE COURT: No. I'm not disposed to -- does the  
15 defense want me to give that -- the government want me to give  
16 that?

17 MS. PIEMONTE-STACEY: No, your Honor.

18 THE COURT: No. I'm going to stick to the guideline  
19 charge. Your rights are saved. Anything else?

10:49 20 MS. FISHER: No, your Honor.

21 THE COURT: Very well. So we'll take a recess until  
22 11:00. The government will close. Then I think maybe another  
23 ten-minute recess so we don't have to sit for two hours  
24 listening to three of us talk. And so I can call people by  
25 name, who is going to close for the government?

1 MS. PIEMONTE-STACEY: I am, your Honor.

2 MS. PEACHY: And I am.

3 THE COURT: Fine. We're recessed until 11:00. We're  
4 recessed.

5 (Recess taken 10:50 a.m. to 11:05 a.m.)

6 THE COURT: As I said, ladies and gentlemen, we now  
7 come to one of the most important parts of the trial, the  
8 moment when the attorneys stand up before you and quite  
9 candidly attempt to persuade you with respect to the evidence  
11:05 10 that you've seen and heard.

11 This is the highest calling of the attorney, to stand  
12 before an American jury and argue on behalf of the client.  
13 It's what we think of when we think of the legal profession  
14 here in the United States. I do have one -- I say to you, I  
15 know you're going to give the attorneys the same courteous and  
16 careful attention that you've given me and you've given all the  
17 witnesses throughout this trial.

18 Now the caution. These attorneys weren't there. They  
19 don't know what went on. They have tried through the  
11:06 20 presentation of evidence to lay matters before you in an  
21 appropriate fashion. Now they'll argue the strengths and the  
22 weaknesses of what you have before you. Just remember, they  
23 weren't there. They don't personally know. So if your memory  
24 or your beliefs about the evidence is different than something  
25 an attorney argues to you here, your memory governs because it

1 is the government here that bears this burden of proof beyond a  
2 reasonable doubt, just as it was when evidence was being  
3 received; the government gets a chance to make their closing  
4 argument first.

5 Ms. Stacey.

6 MS. PIEMONTE-STACEY: "Lisa, I have to ask, does  
7 Samantha know she can never tell anybody about this?" "Does  
8 Samantha know we can get into a lot of trouble, even years  
9 later?" That, ladies and gentlemen, was the e-mail that the  
10 defendant sent to the undercover agents on the morning of March  
11 19, 2014. After he left his home in Connecticut and was  
12 traveling more than two hours to Massachusetts to meet what he  
13 thought was a 15-year-old minor for sex.

14 Now, ladies and gentlemen, you've heard the evidence  
15 in this case. You've seen exhibits. You've heard the  
16 testimony, and now it's time for you to evaluate that evidence.  
17 And the government has proved beyond a reasonable doubt that  
18 the defendant attempted to entice a minor into a legal sexual  
19 activity. How do you know? You're going to use your common  
20 sense in evaluating the evidence, the weight of the evidence  
21 and the testimony that you heard. But what did you hear,  
22 ladies and gentlemen?

23 On February 14, 2014, undercover agents for Homeland  
24 Security Investigations -- you've heard that referred to as  
25 HSI -- posted an ad on craigslist, on the website craigslist.

1 And they posted that ad in the "Casual Encounters" section, and  
2 they were acting in an undercover capacity. And what did that  
3 ad say? You saw the exhibit. It says -- they posed and  
4 pretended to be a mom with a daughter, open-minded, seeking a  
5 taboo relationship that needed to be discrete.

6 Ladies and gentlemen, within minutes, within minutes  
7 of that advertisement being posted, that man, the defendant,  
8 responded. And you saw his response, the very first page of  
9 Exhibit 2. He said, "Here are my likes. I like blindfolds" --  
10 "Here of my sexual likes. Blindfolds, handcuffs, sex toys,  
11 oral sex," et cetera. He wrote a description of a sexual  
12 scenario that he imagined in response to that ad. He sent a  
13 description of himself, and he attached a picture of himself.

14 So what did the undercover agents do at that point,  
15 ladies and gentlemen? Well, they said, "I'm Lisa Richards.  
16 I'm trying to introduce my daughter to sex. Do you mind if  
17 she's young?" And you saw those e-mails. And the defendant's  
18 response was, "How young?" And, "I hope we can make this  
19 work."

11:09 20 All of that, ladies and gentlemen, all of it within  
21 the very first hour of the ad being posted. And minutes later,  
22 the undercover remembered the testimony you've heard, posing as  
23 an abusive mother, said, "My daughter is 15, but she's  
24 experienced, and you heard that the undercover agents adopted  
25 these personas; the persona of Lisa Richards, offering her

1 15-year-old daughter for sex, and the persona of Samantha,  
2 Sammy, who was an experienced 15-year-old child, according to  
3 her mom. And what was the defendant's first response of after  
4 hearing she was 15, the very first e-mail, "Sounds very  
5 naughty." That was the defendant's first response after  
6 hearing Sammy was 15 years old.

7 Yes, it was followed by, "I'm concerned about her age  
8 because legally she should be 16 years or older"; and  
9 immediately following in that same e-mail, "I'm concerned about  
10 her age," was all the questions that that man, the defendant,  
11 had about that 15-year-old's sexual experience. And the e-mail  
12 ends with the defendant saying, and I quote, "It's a very big  
13 turn-on for me." You'll have those e-mails in the jury room,  
14 ladies and gentlemen.

15 From there you heard Agent Squire and you heard the  
16 testimony, that over a one-month period of time, undercover  
17 agents and the defendant exchanged more than 200 e-mails. All  
18 of them with one sole purpose in mind, sex with a 15-year-old  
19 minor named Sammy.

11:11 20 Did the defendant have the opportunity to decline the  
21 invitation? Did he have the opportunity to decline Lisa  
22 Richard's invitation to introduce her daughter into sex? He  
23 sure did. Not once but twice. But he stayed. You saw the  
24 evidence immediately after the defendant said, "I'm concerned  
25 about her age since legally she should be 16 years old." The



1 undercover agents sent an e-mail back to the defendant and  
2 said, "She's not. I guess this conversation is over." "She's  
3 not 16. I guess this conversation is over." Did the defendant  
4 say, "Thank you," and move on to the next craigslist ad? No,  
5 he didn't. He sent two e-mails. And let me read to you pieces  
6 of some of those e-mails. "Mommy is very naughty," after he  
7 finds out she's 15 years old. "So how and when did you get  
8 your daughter involved? Daddy would like to and needs to spank  
9 mommy and daughter. I'm getting aroused just thinking about  
10 the play we can have together." And specifically, "Nope. It's  
11 not over. I want to talk more. I'm very intrigued by it all,  
12 such taboo and naughty play." That was the defendant's  
13 response to, "She's not 16, so I guess this conversation is  
14 over." And that response all is happening within an hour and a  
15 half of the ad being posted on craigslist.

16 So what do the undercover agents do next? They gave  
17 the defendant a second opportunity to back away, a second  
18 opportunity to get out of Lisa Richards introducing her  
19 15-year-old daughter to sex. What did they say? They said, "I  
20 don't have time if you're not serious," as they're pretending  
21 to be Lisa Richards. "I don't have time if you're not serious.  
22 You can imagine I'm getting a lot of offers." Did the  
23 defendant say, "No, thank you"? Did the defendant say, "Let me  
24 think about it"? The defendant in the e-mails that you saw  
25 said, "I am serious. I will not waste your time." He knows

1 Sammy is 15 years old at this point.

2 And when the undercover agent stopped e-mailing with  
3 the defendant later that day on February 14, what was the  
4 defendant's response? He didn't go off. He sent three e-mails  
5 to undercover agents, three e-mails that the undercover agents  
6 didn't respond to right away. The first e-mail, "Let's talk  
7 more." Undercover agents don't respond. A few hours go by.  
8 The second e-mail -- this is all on February 14 -- "I wouldn't  
9 mind talking to her." That's Sammy. The second e-mail,  
10 undercover agents don't respond. And then the third e-mail,  
11 "Hmm. Did you lose interest, or did you just get busy?" Those  
12 three e-mails from the defendant to undercover agents all not  
13 responded to on February 14 by the undercover agents.

14 And then you heard a period of time went by. Four,  
15 five days, and there was no communication at all between the  
16 undercover agents and the defendant. And you heard Agent  
17 Squire testify that there were other investigations ongoing  
18 during that time and they were triaging the various responses  
19 that they got to this craigslist ad.

11:14 20 So on February 19, 2014, five days after the ad was  
21 posted, undercover agents responded to, "Did you lose interest,  
22 or did you just get busy?" They responded to the defendant,  
23 and you saw that response. "Hey. Sorry. Lost track of the  
24 conversation. Can you believe the snow?" It was this time of  
25 year at that point, ladies and gentlemen, lots of snow. "Here

1 I am. This is a picture of me." You heard Agent McDonagh  
2 testify that she had posed for this picture that was supposed  
3 to be Lisa Richards. So Agent Squire attached the picture of  
4 agent McDonagh pretending that she was Lisa Richards, and that  
5 e-mail then got sent to the defendant. And from that point on,  
6 there was continuous communication between the defendant and  
7 the undercover agents.

8 During the e-mails did the defendant say he was  
9 concerned about the minor's age? He said that. He typed those  
10 words. What was his concern? Getting caught, ladies and  
11 gentlemen, getting into a lot of trouble, just like he wrote on  
12 March 19. That was his concern. Look at the e-mails. He knew  
13 how old the minor was. He says so in the e-mails, and the  
14 e-mails to him say so.

15 Look at the e-mails. He knew what he was getting  
16 into. He says so in the e-mails. And yet, the defendant still  
17 showed up on March 19 at Sammy's apartment, at that 15-year-old  
18 minor's apartment. And look at the e-mails where the defendant  
19 talks about his supposed concern for her age. Each time -- and  
11:16 20 there are only a handful of them, ladies and gentlemen, four or  
21 five sprinkled throughout hundreds of e-mails between the  
22 defendant and undercover agents. And in each of those e-mails  
23 where he says, "I'm concerned about her age. Are you sure this  
24 is okay," each time immediately following the supposed  
25 statement of concern, he says things like, "As long as she

1 desires this, I'm game." Same e-mail, same piece of paper. He  
2 says, "Where do we go from here?" He says, "I want this to be  
3 fun, playful and a good experience for her." He says, "It's  
4 hot because it's so naughty." And he says, "It's a turn-on to  
5 have her attracted to me, considering our age difference."  
6 That's what you'll find in the e-mails where he supposedly  
7 expresses concern about her age.

8 And then the defendant took one step after another to  
9 entice that minor into having sex with him. Look at the body  
10 of e-mails that the defendant has with Lisa Richards, the woman  
11 who is going to offer up her daughter for sex. Look at the  
12 things he asks her. Look at the ways he tries to assure her to  
13 get her to allow that child to have sex with him. "Is Sammy  
14 seductive and sensuous," he asks. 15 year old girl. "Does  
15 Sammy like the idea of me being her Daddy and her being my  
16 little girl?" "I want this to be fun, erotic, sensuous and  
17 playful." "What are Sammy's likes and dislikes?"

18 All of these questions and statements coming from the  
19 defendant to the mother so that the mother chooses him so he's  
20 the one who can have sex with her 15-year-old daughter. He  
21 says to the mom, "Have Sammy text me or send me an e-mail, and  
22 we'll talk directly but save them, save those e-mails so that  
23 you can see what she and I are talking about," again assuring  
24 the mom this is going to be okay, telling Lisa Richards that it  
25 would be better for Sammy to be in her own room where she's

1 familiar, comfortable and secure rather than in a hotel when  
2 they have sex. And then getting Lisa Richard's involved, "How  
3 do you see this going? What type of experience does she have?  
4 Can you get her to take this picture for me?"

5 Look at the second body of e-mails, ladies and  
6 gentlemen, that the defendant himself had with Sammy. March  
7 12, 2014. There's a large volume between that man and what he  
8 thought was a 15-year-old child. What does he say to her?  
9 What does he say to Sammy? "Hi, sweetheart. How was your  
10 day?" "Have you been thinking of you and me?" "I'll make it  
11 fun and enjoyable for you sweetheart." "Is there anything you  
12 like or hope I do with you?" "You're a very pretty lady."  
13 "Can't wait to see you." "Would you like me to touch you  
14 there?" "Are you excited to kiss a man for the first time?"  
15 "I'll be very good to you." "I can't wait to hold you in my  
16 strong yet gentle arms and feel your body against mine." To a  
17 15-year-old girl.

18 Then, of course, ladies and gentlemen, was the travel.  
19 March 19, the day the defendant had arranged to meet with Lisa  
20 Richards to meet her 15-year-old daughter for sex. The  
21 defendant packed up that backpack that you saw, left his home  
22 in Connecticut, got into a truck, drove two hours to Boston,  
23 more than two hours to Boston, Mass., the e-mail that morning,  
24 "Does Sammy know she can't say anything, or we're going to get  
25 in a lot of trouble?"

1           The travel, over two hours. Lots of time to think,  
2   plenty of time to turn around, lots of communication with the  
3   undercover agents. And then the defendant, thinking he  
4   attained that mental state with that minor, thinking she'd  
5   engage in sexual activity with him, all of those steps, all of  
6   those steps to entice that minor into sexual activity with him,  
7   a sexual activity that is illegal in the Commonwealth of  
8   Massachusetts because a minor under 16 cannot consent to sex.

9           Ladies and gentlemen, the undercover agents provided  
11:20 10   an opportunity for the defendant to commit a crime. He took  
11   that opportunity. He ran with that opportunity, and no one  
12   forced him into anything. The undercover agents provided the  
13   way out twice. He stayed. And his willingness to commit that  
14   crime, ladies and gentlemen, more than 200 e-mails. Several  
15   hundred might have been the testimony. No one forced that guy  
16   to sit down at a computer and type that stuff out. He sat  
17   there himself. He typed those e-mails. They're on his  
18   computer. You heard the evidence.

19           And look at the travel from Connecticut to  
11:21 20   Massachusetts. Who forced him into the truck that morning?  
21   Well, that would be nobody. He got up, he made a decision. He  
22   packed that backpack full of all the tools he needed to have  
23   sex with a child. He walks out of his house -- you saw the  
24   tape, ladies and gentlemen -- methodically. Comes out of the  
25   house, puts something into the car. Goes back into the house,

1 gets something else. Comes back to the car, methodically  
2 planning. He got in that car, and no one forced him to take  
3 the two-hour drive. No one forced him to pack the bag. And  
4 when he gets to Watertown, Massachusetts, certainly no one  
5 forced him out of the car, and no one made him knock on that  
6 apartment door. The defendant had plenty of opportunity to get  
7 out of sex with a minor. He chose to stay. "I will not waste  
8 your time, he said." He didn't.

9 Now, as you will be instructed, more instructed, this  
10 is an attempt case because there was no real victim. But  
11 ladies and gentlemen, he didn't know that. He didn't know that  
12 when he sent hundreds of e-mails detailing the sex he would  
13 have. He didn't know that when he packed that bag and brought  
14 it with him from Connecticut to Massachusetts. The defendant  
15 didn't know she wasn't real when he traveled.

16 And ladies and gentlemen, let's talk about that  
17 backpack for one minute. You saw all the sex toys that were in  
18 that backpack. I don't need to parade them out here in front  
19 of you. But what was in that backpack, ladies and gentlemen?  
20 The sex toys, sure; sex toys that he said in e-mails he would  
21 bring with him; sex toys that he listed he was interested in  
22 when he first responded to the ad; sex toys that he mentioned  
23 and all of the ways he would have sex with a 15-year-old. So  
24 the sex toys are in the bag. But ladies and gentlemen,  
25 condoms. There were condoms in the bag. And do you remember

1 the e-mail where the defendant says, "Is Sammy on birth  
2 control?" Do you remember the e-mail where the defendant says,  
3 "Can't have her making babies at her age, can we?" Condoms  
4 were in the bag. What else was in the bag? Cologne. Do you  
5 remember the e-mail about the cologne and undercover agents  
6 going back and forth and their commenting on how they smell  
7 people in a mall, and Sammy and Lisa Richards would say, "That  
8 guy smells nice." And what does the defendant say? "I'll  
9 bring some cologne with me. She can spray it on her pillow, so  
11:24 10 she'll have memories of me taking her there." He said that  
11 about the 15-year-old girl. And there was the cologne, right  
12 in the bag.

13 And then, ladies and gentlemen, further evidence of  
14 his intent, whether undercover agents asked him to bring  
15 something, whether he decided on his own, a stuffed animal, a  
16 stuffed animal that he thinks is appropriate for a little girl  
17 who he is trying to have sex with. Steps to entice that minor  
18 into engaging in sexual activity with him, everything the  
19 defendant said he would use and he would bring when he was  
11:25 20 having sex with a minor.

21 And so ladies and gentlemen, you've heard a lot about  
22 these e-mails and you've heard that, you know, sometimes they  
23 got graphic. Well, undercover agents can engage in subterfuge,  
24 undercover agents can adopt a false identity to investigate  
25 crimes, and that's what these undercover agents did. But do



1 you know what talking dirty did? It made it real. Lisa  
2 Richards was an abusive mom offering her daughter up for sex,  
3 and the dirty talk going both ways kept that situation real.  
4 These agents never forced the defendant to do anything. They  
5 provided him with an opportunity. The defendant took that  
6 opportunity. The defendant had two opportunities to back out.  
7 He didn't. He stayed. And he showed up at that door on March  
8 19, 2014.

9 Now, the Court will instruct you on the law in this  
10 case, but let me hit and discuss with you some of the elements  
11 that I think be you'll be hearing.

12 First, the attempt to entice a minor to engage in  
13 sexual activity, there was no real victim, and this is an  
14 attempt case, and the Court will instruct you on the law. But  
15 the defendant intended to entice that minor into having sex  
16 with him, and you saw the evidence and substantial steps that  
17 he took, the e-mailing with Lisa Richards, the e-mailing and  
18 texting with Sammy. The conversations with the undercover  
19 agents, packing that bag with stuff that would help him and the  
20 travel to Massachusetts, ladies and gentlemen.

21 And then there's an interstate commerce element. You  
22 heard the testimony of Agent Manning who did the forensic  
23 evaluation on the computers and the computer media that were  
24 seized from the defendant's home and his office. And you'll  
25 hear that he sent and received e-mails over the internet on his

1 computer and that the computer belonged to the defendant.

2 "Child," under the statute is someone who is less than  
3 18 years old. And you heard the defendant thought that Sammy  
4 was 15 years old.

5 And finally, to engage in a legal sexual activity.  
6 The e-mails detail that sexual activity. I've summarized the  
7 sexual activity. I'm not going to do it again, ladies and  
8 gentlemen, but all of the sexual activity that the defendant  
9 intended to engage in, wrote that he intended to engage in,  
10 described what he intended to engage in, all in those e-mails,  
11 the backpack, the fact that Sammy was a minor, and that she  
12 can't consent because, under Massachusetts law, a child under  
13 16 cannot consent to sex.

14 Ladies and gentlemen, the defendant's e-mails to  
15 entice a minor to engage in steps -- I know engage in sex, the  
16 steps he took to get her to engage in sex, that shows you his  
17 intent. And keep in mind how this enticement, the defendant's  
18 enticement of a minor began and how it ended. After the first  
19 opportunity to walk away, that defendant says, "Nope, it's not  
20 over." After undercover agents gave him a second opportunity  
21 to walk away, he said, "I'm serious. I will not waste your  
22 time." And then the morning of, "Does Samantha know we can  
23 never tell anyone about this, that we can get into trouble,  
24 even years later?" That, ladies and gentlemen, shows you the  
25 defendant's intent.

1 We ask that you find the defendant guilty. Thank you.

2 THE COURT: Ms. Peachy.

3 MS. PEACHY: Thank you, your Honor.

4 "I'm pursuing this only because she is consenting. If  
5 I feel or hear her change her mind, I will not engage her."

6 There is no coercion in this case. There's no child that needs  
7 coercing. If anyone's being persuaded into anything in this  
8 case, it's Mr. Hinkel, who is being persuaded to commit the  
9 crime the government now charges him with.

11:29 10 We probably all had the experience of buying a car.  
11 You go to the lot. You see a sticker price on the car. That's  
12 the price that's advertised. In this case there's something  
13 being advertised. It's an ad on craigslist put out by the  
14 undercover agent, which says nothing about a minor.

15 And sometimes it's that way when you're buying a car.  
16 You see a sticker price advertised, and it says nothing about,  
17 "Oh, this is included," and or, "That isn't included." And  
18 when you talk to the dealer about it, that's when you start to  
19 find out, "Oh, that price doesn't include that and doesn't  
11:30 20 include that," and the dealer tries to talk you into it a  
21 little bit. And you express some concerns. Maybe you express  
22 some hesitations, and the dealer reassures you. The dealer  
23 wants to make a deal. And eventually maybe you accept the  
24 dealer's offer.

25 Now, wouldn't it be strange if after you buy the car

1 from that dealer, he then later says, that you, the buyer,  
2 coerced him into making the deal? Well, that's pretty much  
3 what the government is doing here in this case.

4 They advertise on craigslist, personal ads, casual  
5 encounters, it's a regular website, personal ad website. It's  
6 not some child predator website or child pornography website; a  
7 regular website. They advertise this mother-daughter scenario,  
8 and they don't say anything about the scenario involving  
9 someone who is underage.

11:31 10 So when you look at Mr. Hinkel's initial response to  
11 that advertisement, keep that in mind. He doesn't know when he  
12 writes that initial response that this involves an underage  
13 person. He talks about how he's a Daddy dom, and, in fact,  
14 their advertisement said that they're looking for some dom,  
15 some domination-type sex. So he tells them, "I'm an  
16 experienced Daddy/dom." And he lists all those other things  
17 he's interested in, this 50 Shades of Grey-type stuff, bondage,  
18 spanking, toys, all this stuff we know that he's interested in.

19 But what doesn't he say in that initial response? He  
11:31 20 doesn't say anything about wanting to have sex with someone who  
21 is underage. That's not on his laundry list of interests. We  
22 know that from his initial response. And what happens when he  
23 is told that the daughter is young? He's not just told that  
24 she's 15. By the way, we're not talking about an  
25 eight-year-old here. We're talking about a 15-year-old. The

1 agents designed this as a 15-year-old. And he's not just told  
2 that she's 15. It's 15 but she's experienced. Both things  
3 designed to try to make this more okay for Mr. Hinkel, for him  
4 to feel more comfortable about this. She's already sexually  
5 experienced. She's 15. It's all okay.

6 What else does Agent Squire tell Mr. Hinkel about the  
7 girl's sexual experience? Agent Squire tells him this  
8 (indicating). Agent Squire writes this to him (indicating).  
9 Agent Squire writes this to Mr. Hinkel (indicating) and writes  
10 this to Mr. Hinkel (indicating), referring to the fact that  
11 they've looked at pornography together online.

12 You heard that one of the first things that Mr. Hinkel  
13 says when he's told that the girl's age is that he's concerned  
14 about the age. And the prosecutor told you that maybe a  
15 handful of times he expressed some concerns, but it's only  
16 because he was afraid of being caught. Well, let's look at  
17 what Mr. Hinkel said. "As long as she desires this, I am  
18 game." "That made me feel more comfortable, knowing she's on  
19 board with this." "I was concerned and skeptical at first when  
20 you told me her age." "I am pursuing this only because she is  
21 consenting." "If I feel or hear her change her mind, I will  
22 not engage her. I will hate myself forever leaving an  
23 emotional scar on her." "I won't lie. I do have some  
24 conflicting feelings about this." "It's hot because it's so  
25 naughty, but I do sometimes feel like I shouldn't be doing

1 this." "I fear ruining her emotionally, but as long as she is  
2 willing and excited about this, I will proceed." "So she's  
3 really okay with my playing with her?" "I'm still not sure  
4 what we will be doing yet. I'm going to play it by ear and  
5 gauge it based on Samantha's feelings and comfort level."  
6 That's the day before he's supposed to meet her. "Lisa, her  
7 comfort and her feelings is my priority."

8 Again, the day before the meeting is supposed to  
9 happen, "Lisa, I really am nervous. This is so out of my  
10 element. I never thought I would be with such a young girl.  
11 When I answered your ad, I was thinking mother-daughter, like a  
12 mother in her 40s and a daughter in her 20s. I guess I won't  
13 know how I will really feel until I see Samantha's response and  
14 excitement." "Even though I have always been dominant and take  
15 charge, this is one situation that I just don't know how things  
16 will transpire yet." "I know I sound like a broken record, but  
17 I really don't know how things will go." Those hesitations are  
18 real. He tells them that he is not sure, that he's not going  
19 to do anything that she doesn't want to do. And he's reassured  
20 by the agent, even when he expresses those concerns and  
21 hesitations. You can look at what the agents write back to him  
22 after he writes those e-mails to the agent expressing his  
23 concerns.

24 Here he is, charged with attempting to coerce a minor  
25 into sexual activity. It's kind of a strange thing in this

1 case, attempting to coerce a minor that they created,  
2 attempting to coerce a minor into a situation that they created  
3 before Mr. Hinkel even entered the picture.

4 Keep in mind that there's that one crucial element  
5 here. I keep saying it, coercion, persuasion, enticement.  
6 This isn't about whether Mr. Hinkel intended to have sex with a  
7 minor. That's not what he's charged with. That's not what the  
8 government has charged him with here. Did he intend to have  
9 sex with someone underage? Sounds like it. You know, the  
10 government spent a lot of time talking about that. But what  
11 he's charged with is luring a child over the internet into  
12 agreeing to have sex with him. And that's not what he did.

13 It's not about whether he drove two hours. It's not  
14 about whether he traveled to go meet the mother and the girl.  
15 That's not what he's charged with. He's charged with coercing  
16 a minor with his communications over the internet. That's what  
17 makes this a federal crime, is that internet part of it, that  
18 it was those communications, those e-mails that he's writing  
19 that were designed to lure the minor into agreeing to have sex  
20 with him.

21 Like I said, the government did spend a lot of time  
22 talking about the trip that Mr. Hinkel made from his house in  
23 Connecticut to Watertown. They obviously spent a lot of money,  
24 resources, with this helicopter taping him getting from his  
25 house to his truck, following him from Connecticut to

1 Massachusetts, all these agent on the ground, the guy in the  
2 helicopter, the agent with the Easter decorations in the  
3 window. They put a lot of effort into this case. But you know  
4 what? They overplayed their hand. They really overplayed  
5 their hand.

6 The stuff that Mr. Hinkel has in his truck, I showed  
7 you this morning -- unfortunately, we have to see these  
8 pictures of Mr. Hinkel, right? He's dressed in women's  
9 clothing, and he's wearing makeup, and he's wearing the things  
10 that are in the truck. I told you that in my opening, that  
11 when they introduce the stuff in the truck, we know what it's  
12 for because we have pictures of Mr. Hinkel wearing it. It's  
13 not for Sammy. It's for him. And the stuff that he has in the  
14 backpack, again, I told you in the opening keep in mind who  
15 told him to bring that stuff? The gift. Are they saying that  
16 that's the proof that he was trying to coerce the minor?  
17 Because that was them who told him to bring the gift, not once  
18 but twice, once by Lisa and then again as Sammy, who asks about  
19 if he's going to bring her something. The cologne, that's  
20 their idea. The lube, that's their idea. The sex toys, they  
21 want him to bring the toys because they think it would be fun  
22 to use the sex toys.

23 And what else did we find out about some of the things  
24 in the truck? When Mr. Hinkel is interviewed by agents when  
25 he's arrested, he tells them, "It's for sex with other women."



1 And we know some of that from some of the stuff that they got  
2 off his computer, some of these other e-mail fragments, that  
3 he's having this BDSM type of sex with other people. You can  
4 see that in the e-mail chats.

5 I would like you to focus on where the actual coercive  
6 statements are. Where is it that Mr. Hinkel is talking to  
7 Sammy or through the mother and trying to coerce this girl into  
8 having sex, to do something that she's not willing to do?  
9 Where is he trying to bend her will? He actually only speaks  
10 to Sammy twice. And you'll see, you can look at those e-mails.  
11 On February 24 and March 12. He actually calls her sweetheart.  
12 Is that him trying to coerce her into sex? Asking her her  
13 favorite color, talking nice to somebody, is that what we're  
14 going to call coercion? Is that luring a child into having  
15 sex?

16 And what does he talk about doing when he's actually  
17 talking to Sammy? When he talks to Sammy, all he talks about  
18 is kissing and touching. He doesn't talk to Sammy about having  
19 sex with her. All he talks about asking her to do is kissing  
20 and touching, and that's not illegal. Sure, it's  
21 uncomfortable, and no one really wants to think about it  
22 probably, but that's not a crime. Kissing a 15-year-old, as  
23 long as she's willing, is not a crime. Touching is not a  
24 crime. The crime is if he's trying to lure her into agreeing  
25 to have sex with him, and that's not what he's talking about

1 when he talks with Sammy.

2 What does the agent tell Mr. Hinkel about how Sammy  
3 feels about this whole thing? Agent Squire tells Mr. Hinkel  
4 that she -- they showed Sammy all of the pictures. This is  
5 including the picture of a penis, that she thinks he's someone  
6 famous. And I'm not going to read out loud the rest of it  
7 that's there. That's how Sammy feels about all this, according  
8 to what the agent is writing to Mr. Hinkel.

9 Sammy says that he's hot, that she thinks it's going  
10 to be fun when she's asked about how she feels about this  
11 meeting coming up. When Mr. Hinkel says, "Would you like me to  
12 touch you there as well," this is after Sammy says that she  
13 rubs herself sometimes, she says, "I think so. Mom said you're  
14 really good at it, and if it feels really good when a man does  
15 it." Does that sound like someone he's coercing into  
16 something? When he says, "I hope you like to kiss," she says,  
17 "I do. I haven't kissed a man before, and you are very hot.  
18 Mom showed me all the pics, too." The agent has Sammy refer to  
19 Mr. Hinkel as her BF, as her boyfriend. She signs off a e-mail  
11:42 20 with HAK, hugs and kisses. Is this someone who he's luring  
21 into something?

22 After Mr. Hinkel chats with Sammy, the agent, as Lisa  
23 says, "The way she was floating around here on cloud nine when  
24 she was done talking with you." And it goes on from there.

25 When Mr. Hinkel is corresponding with the agents,

1 there is certainly some very explicit conversations that get  
2 very uncomfortable to read and to listen to. But keep in mind  
3 that the agent is reciprocating. And not just that. He's  
4 going even further, even when Mr. Hinkel isn't asking or  
5 engaging in any back-and-forth conversation. The agent comes  
6 up with these fantasy stories that he throws out there to  
7 Mr. Hinkel like that one on March 15 where he talks about how  
8 Lisa and Sammy are sitting together talking about Mr. Hinkel  
9 and thinking about him. And she starts masturbating herself  
10 and masturbating her daughter, and it's all like a dream. Is  
11 that the agent just -- whatever he said -- like continuing some  
12 persona or trying to be convincing in this persona? No.  
13 That's him trying to hook Mr. Hinkel, trying to lure him  
14 further into this whole scenario that they've created.

15 What else does the agent write? What are some of the  
16 other things that Agent Squire, a Homeland Security agent, who  
17 is sitting at his computer, is writing? He writes that  
18 (indicating). He writes that about the 15 year old  
19 (indicating). He writes that (indicating). He writes that  
20 (indicating.) He writes that to Mr. Hinkel (indicating). He  
21 writes this, after Mr. Hinkel sends the picture of a penis  
22 (indicating). He writes that (indicating). He writes that  
23 (indicating). He writes that (indicating). He writes that  
24 (indicating).

25 This is more than a case where the government is

1 creating, offering on opportunity for Mr. Hinkel to commit a  
2 crime. It's more than that. They're not just offering him an  
3 opportunity. This is entrapment. This is the government going  
4 too far and persuading and talking Mr. Hinkel into committing a  
5 crime. How do they do that? How do they induce him into  
6 committing this crime? They do it by complimenting him,  
7 telling him he's hot, by telling him his penis is big. They do  
8 it by writing pornography to him, by suggesting repeatedly that  
9 he talk to the 15-year-old Samantha, by suggesting that he  
11:46 10 bring a gift, which now the government wants to argument is  
11 evidence of his enticement of the girl. They induce him by  
12 making it all seem okay because the girl is 15, but she's  
13 already had sex. And the mom's continuing to molest her and  
14 have sex with her and kind of make it all seem okay.

15 They induce him by offering the mother as a willing  
16 person, as a person who wants to have sex with Mr. Hinkel and  
17 wants to have the kind of BDSM sex that Mr. Hinkel is  
18 interested in. They induce him by pursuing him again, even  
19 after he stops writing to them for five days.

11:46 20 Whatever their excuse is, I don't -- it doesn't  
21 matter. Mr. Hinkel stops writing to them for five days. Okay,  
22 so the night of the 14th he says, "Did you lose interest, or  
23 are you just busy?" Is that someone who is trying to lure a  
24 child who just stops writing? They pick up the communications  
25 again after five days of Mr. Hinkel not saying anything to

1       them. They induce him by putting the ad out there that doesn't  
2       say anything about this involving a minor.

3               And the other part of entrapment, you'll hear the  
4       judge tell you, is that Mr. Hinkel was not predisposed to  
5       commit this crime; that he wouldn't have otherwise committed  
6       this crime if it weren't for what the government did in this  
7       case, and we know that there is absolutely no predisposition on  
8       Mr. Hinkel's part. You heard he has no criminal record. He's  
9       married. He has two children. They talked to his wife. They  
11:47 10      talked to his children. They didn't find any evidence of abuse  
11      or anything like that. His wife, when she found out, was  
12      shocked, fell to the floor crying. They looked through five  
13      computers, God knows what else, the cameras in the truck, other  
14      electronic devices, but five whole computers, 26,000 pages of  
15      data retrieval here.

16              And what do they find that shows that Mr. Hinkel was  
17      predisposed to commit this crime? Do they show any evidence of  
18      him trying to lure other children, trying to talk to other  
19      children, looking at child pornography, going to child  
11:48 20      pornography websites? You know what they find? They find five  
21      anime cartoon pictures in a web cache file that we have no  
22      idea where that came from, when it got there. It could have  
23      been just -- we do know that he didn't visit any child  
24      pornography websites, so we know it doesn't come from a website  
25      where he's going to look for child pornography. God knows how

1 that ends up there. That doesn't show that he's predisposed to  
2 commit this crime. But that's all they got, so they got to put  
3 it out there. That's how much they're reaching here.

4 Mr. Hinkel has no child pornography, no evidence that he was  
5 trying to have sex with minors at all. And we even know that  
6 from his own words, saying that, you know, he once placed an ad  
7 for something like this but the ad said the girl had to be of  
8 legal age.

9 He's obviously having a lot of kinky sex. We talked  
10 about this in the opening. There's a lot of mention of his  
11 interests. And that might make you uncomfortable, and you  
12 might not like hearing about that kind of stuff, and you know  
13 he's married and he's not a saint, that's for sure. But he's  
14 not a pedophile, and he's not a predator.

15 Coercion, inducement, persuasion, enticement, that's  
16 one of the critical elements here. Think about what those  
17 words mean to you. And the government must convince you beyond  
18 a reasonable doubt. You must be convinced beyond a reasonable  
19 doubt that that's what Mr. Hinkel was doing when he was writing  
20 these e-mails. They also must prove to you beyond a reasonable  
21 doubt that this was not entrapment. You must be convinced  
22 beyond a reasonable doubt that Mr. Hinkel was not persuaded by  
23 the government agents to commit this crime. You must be  
24 convinced beyond a reasonable doubt that Mr. Hinkel was  
25 predisposed to commit this crime.

1           So if you're going back and forth over these e-mails  
2 when you're deliberating trying to say, "Well, does it mean  
3 this, or does it mean that," and you can't decide, Mr. Hinkel  
4 is entitled to the benefit of that doubt. That means you must  
5 acquit him and find him not guilty.

6           There's a quote when you come up to the courthouse  
7 inside in the main lobby there, the grand staircase, by Justice  
8 Brandeis. The quote says, "Justice is but truth in action."  
9 The truth here, Mr. Hinkel would have never committed this  
10 crime if the government hadn't taken these steps to persuade  
11 him to commit the crime. The truth is that what Mr. Hinkel did  
12 is not the crime that the government has charged him with. He  
13 was not trying to coerce a minor into sexual activity. That  
14 truth in action justice here is a verdict of not guilty.

15           THE COURT: Any rebuttal, Ms. Stacey, briefly.

16           MS. PIEMONTE-STACEY: The defendant wasn't  
17 predisposed? He sure has an interest in children. Okay.  
18 There wasn't child pornography on his computer. He wasn't  
19 charged with possession or receipt or anything having to do  
20 with child pornography. The defendant is being charged with  
21 trying to get a minor to agree to have sex with him, not  
22 whether he actually had sex, not whether he intended to have  
23 sex, to get a minor to agree to have sex with him. So look at  
24 that evidence.

25           The pictures of the defendant in little girl's

1 clothes, interest in children? The pictures, the animated  
2 cartoons where adults are sexualizing children, sexual interest  
3 in children? E-mails that ask if Sammy has any idea that he  
4 will be licking and kissing her, e-mails where that man says  
5 he's just the right size for a baby girl to feel deep inside  
6 her. He was predisposed.

7 Ladies and gentlemen, the defendant was coerced? And  
8 he couldn't have possibly been interested in sex with Sammy  
9 because he didn't talk to Sammy about it. Well, you saw all  
11:52 10 the e-mails where he spoke about all the things he was going to  
11 do to that child with her mom. And you know why he didn't talk  
12 to Sammy about it? Because it's really scary to a 15-year-old,  
13 isn't it, to have a man of his age talking about all the  
14 bondage and the sex that he's going to have with her. And you  
15 know what would have happened if he spoke about that sex with  
16 Sammy? She would have said no. In that way, how do you entice  
17 someone to have sex with you, because talking can be really  
18 scary?

19 Ladies and gentlemen, this is not about whether a  
11:53 20 minor's experienced. It's not about whether a minor consented.  
21 It's about the defendant's intent, not whether he intended to  
22 have sex but whether intended to get that minor to agree to  
23 have sex. We ask that you find the defendant guilty.

24 THE COURT: So we don't talk to you for two straight  
25 hours, let's take a brief recess, about seven or eight minutes.



1 Then I'll be back to explain the law precisely to you in this  
2 specific case. Because what I'm going to say to you now is the  
3 law that governs this case, you must still keep your mind  
4 suspended and do not start talking about the case among  
5 yourselves. We'll recess for about seven or eight minutes.  
6 The jury may stand in recess.

7 (Jury exits.)

8 (Recess taken 11:53 a.m. to 12:04 p.m.)

9 THE COURT: We come now to the final step in the case  
10 before the case is handed to you. And it is a tradition in  
11 this court that, at the outset of the judge's charge, the jury  
12 and I stand and face one another. So I'll ask you to stand up  
13 for just a minute. It is a tradition, in this session of the  
14 court, that all you members of the jury and the judge stand and  
15 face one another. This is not as we stand up to honor our jury  
16 system as you come in and out. This is for us to stand and  
17 acknowledge that we live under a Constitution and government of  
18 law, and the fair and impartial application of that law lies at  
19 the very heart and core of our civilization. That is the  
12:05 20 responsibility imposed both on you and on me. Please be  
21 seated.

22 Now my responsibility is to teach you the law which  
23 you must apply in arriving at a fair and a just verdict in this  
24 case. And we'll start with the two great principles of law  
25 coming straight from our Constitution that govern the trial of

1 any case like this first.

2 Mr. Hinkel started this case innocent, an innocent  
3 man. If he is to be convicted, it could only be on the  
4 evidence that you have seen it and heard it right here in this  
5 courtroom and on nothing else whatsoever. It doesn't count  
6 against him in any way that we had a trial, that he is here;  
7 doesn't count. He starts innocent. And that basic principle  
8 teaches us how trials work. The government bears the burden of  
9 proof here, and the burden of proof that they must bear is  
10 proof beyond a reasonable doubt. He need do nothing. You  
11 can't start a case, waltz into court and say, "Now explain  
12 this, explain that." If that were the law, you see, it would  
13 shift that burden of proof. He'd have to do something. He  
14 doesn't have to do anything.

15 Now, in this case, he didn't testify, but of course he  
16 doesn't have to. Look at all the things that his attorneys on  
17 his behalf did. They've asked witnesses, introduced exhibits,  
18 made arguments to you, all of which they may do. They have  
19 equal right to do that with the government. And what they have  
20 laid before you, consider that. Consider it along with the  
21 evidence the government has laid before you. You can draw  
22 things against Mr. Hinkel from that evidence. But the point  
23 is, by doing that, he assumes no obligation to say or do  
24 anything. So to the extent that there's been any silence and  
25 some gap left here, if gap there is, you can't hold it against

1 him. He's under no obligation to do anything. The government  
2 bears the burden of proof beyond a reasonable doubt.

3 Now, let's talk a little bit you as jurors. I said at  
4 the very beginning, and it applies in full force, I emphasize  
5 it, that your verdict must be based on the evidence. It must  
6 be fair and impartial, a cool reflective sifting of the  
7 evidence is the best way I can say it, so that here, in this  
8 courtroom, justice may be done.

9 When I'm done, two of your number are going to be  
10 designated alternates, and we'll put the alternates down in  
11 these chairs. And when you go out, the alternates will go to  
12 my little office there next to the jury room. And I say, the  
13 alternates won't deliberate. And I tell you now, the  
14 alternates, don't you alternates start talking about the case.  
15 And you may say, "Well, we've come in" -- yes, the trial has  
16 stretched out unavoidably. I thank you again for your care and  
17 attention here and your promptness. That's true of all 14 of  
18 you now. Now two, we're going to put in another room. Really,  
19 I'm talking to everybody now. That emphasizes just how serious  
12:10 20 this is. Because once in a great while during jury  
21 deliberations, something will happen, a juror will take sick,  
22 there's some real emergency at home, and I'll lose a juror.  
23 Rare, but it happens. And I'll tell you what happens, were  
24 that to occur in this case, then I could let that juror go and  
25 I could take an alternate and put the alternate in the jury

1 room. And if that were to happen, I would tell you all, "Start  
2 all over again," because it isn't 11 of you who are left having  
3 talked it all through or talked it through so far and then one  
4 new alternate coming in and the rest of you say to the  
5 alternate, "Well, here's what we think." No, no, no. That's a  
6 new juror. It's 12 different people, and you have to start  
7 right from the beginning. So if you are picked as an  
8 alternate, believe me, you have contributed as much to this  
9 case as the deliberating jurors.

12:11 10 The verdict must be unanimous. That is, all 12 of you  
11 deliberating jurors -- there's only one question on the verdict  
12 slip. I'm going to go over the verdict slip. There's only one  
13 question: Is Mr. Hinkel not guilty or guilty? And you all  
14 must agree. You all must agree as to not guilty. You all must  
15 agree to guilty. I'm going to go over in detail those specific  
16 things that the government has to prove. So remember, you have  
17 to follow the law. If I tell you that the government has to  
18 prove something, but you don't think that's terribly important  
19 in view of other things, you can't just skip over it.

12:12 20 Likewise, I will tell you the specific things they have to  
21 prove, and you can't add to their burden. You can't say,  
22 "Well, I want to know about this or that or the other." The  
23 question is, on the specific things I'm going to go over, did  
24 they prove those things beyond a reasonable doubt.

25 A word about my function. I'm the judge of the law.

1 You must follow the law the way I explain it to you. This  
2 judge's charge is like a law school class, a form of teaching.  
3 I am trying to explain the law to you as accurately and  
4 precisely as I can in this specific case. You can ask me  
5 questions. What you should do is wait until you get out to  
6 deliberate. And while you're deliberating, if you're not clear  
7 on some point of law -- I can't say anything about the  
8 evidence, not my business. Under the Constitution, that's for  
9 you. I have nothing to say about it. But if you're not clear  
12:13 10 what the law requires, what the law says, by all means write it  
11 out. We'll bring you back in here. I will explain it, and I  
12 will keep explaining it until you understand it. This will  
13 prove to you that, in fact, we work in the afternoon because  
14 we're going to be here all the time that you are deliberating.  
15 And if it goes into tomorrow, I'll be right here to answer any  
16 questions about the law.

17 Now, what I try to do is erect for you a mental  
18 framework within which you and you alone decide what the  
19 evidence either has proved or has failed to prove. The fact  
12:14 20 that I am going to talk about all elements in this case does  
21 not mean that I think that anything is proved or not proved. I  
22 simply am trying to explain it all to you.

23 Let's talk about the evidence. I'm not going to  
24 suggest to you how you react to the evidence in any way. Not  
25 my business. But I do want to explain a few things about the

1 evidence. Evidence can be of two types. Direct evidence and  
2 circumstantial evidence. Direct evidence is evidence from a  
3 witness who says directly, "I saw," "I heard," "I touched,  
4 tasted, smelled," evidence that comes directly from that  
5 witness's senses.

6 Circumstantial evidence is evidence of a circumstance  
7 which, when combined with the other evidence, may lead you to a  
8 conclusion. The law makes no difference between direct  
9 evidence and circumstantial evidence. A case can be proved on  
10 direct evidence, on circumstantial evidence or any combination  
11 of the two. But it must be proved to the jury unanimously  
12 beyond a reasonable doubt. This case involves proof of  
13 Mr. Hinkel's intent. What did he intend to do? Did he have  
14 the requisite criminal intent? There's no way to get inside a  
15 person's mind. The law does not require that. The law says  
16 that a person intends the natural and probable consequences of  
17 what he may do. Example: And my examples have nothing to do  
18 with this case. I have a cup of water here. If there was  
19 evidence that I took this cup of water and I held it out like  
20 this and then I crushed the cup, the water would all run out  
21 there on the witness seat. And if you believed that I did  
22 that, you could draw the conclusion that I intended that  
23 consequence, that the water run out. How do you judge these  
24 witnesses? Remember, the case does not turn on how many  
25 witnesses are called, the case does not turn on which side

1 called those witnesses. Those things don't count. What counts  
2 is what you make of each witness's testimony. And as to that,  
3 you have the broadest possible power as jurors. I charge you  
4 that you may believe everything that I allowed a witness to  
5 testify to here before you, and equally important, you may  
6 disbelieve and disregard everything that a witness testified to  
7 just as though that witness had never taken the stand. You  
8 decide that.

9           How do you do it? You can use everything you know  
12:18 10 about these witnesses from watching them both on direct  
11 examination and on cross-examination. How did the witnesses  
12 answer the questions? What were the witnesses' ability to  
13 recall matters, to understand matters? What was the accuracy  
14 with which they testified? What does their testimony -- and  
15 treat each witness individually. Does it have the ring of  
16 truth? Is it believable? Does it fit in with the testimony of  
17 other witnesses? Or, does the testimony of other witnesses  
18 tend to undercut it, take away from it, make it less  
19 believable? Are these witnesses employed by, engaged by,  
12:19 20 supportive of any party in this litigation? Did that color  
21 their testimony, put a spin on anything? All these matters are  
22 left to your good judgment as you are reasonable men and women.

23           In addition to the testimony, we have various  
24 exhibits. The exhibits which are in evidence will go back with  
25 you to the courtroom -- to the jury room. One of them is a

1 video, and we'll have some video player if you want to see that  
2 again so you can play it. Those are exhibits. Your power is  
3 the same with exhibits as with any other evidence in the case,  
4 which is, you can read it, or you can look at it.

5 You can handle certain real evidence, things that are  
6 in evidence. And you can draw conclusions from them. I  
7 suggest with respect to the particular -- with respect to all  
8 items of evidence, your analysis should really be in two steps.  
9 Do you believe the thing is what it purports to be? Is this  
10 something found in a specific place? Is this something that  
11 was sent by someone actually involved in this case? Was this  
12 response a response to this other e-mail? You can decide that,  
13 see if it is what it purports to be. And if it isn't, pay no  
14 attention to it. If you think it is what it purports to be,  
15 then how does it fit? What does it tell you about what's going  
16 on? More specifically, if you believe that was Mr. Hinkel on  
17 certain of these e-mails, what does it tell you about his  
18 intent? What was in his mind? Because that's very important  
19 here. You can disregard the exhibits; you can believe all the  
12:20 20 exhibits; draw conclusions from them. You can believe some of  
21 them and disbelieve others. You are the jury in this matter.

22 Now, that's the evidence in this case. Now, from that  
23 evidence, you're entitled to draw what are known as reasonable  
24 inferences, logical deductions, common sense. You don't check  
25 your common sense at the door to the jury room. Just the



1 reverse. I charge you to apply your common sense to the  
2 evidence that you've heard and seen in this case to the end  
3 that justice may be done. But the standard of proof -- don't  
4 conflate the two -- isn't some sort of common sense. It's  
5 proof beyond a reasonable doubt. So in this case, you're not  
6 interested in what may be possibly or even probably was in  
7 Mr. Hinkel's mind or even if it was Mr. Hinkel. Is the matter  
8 proved to you beyond a reasonable doubt?

9 Let me give you an example, which has nothing to do  
10 with the case, that I think illustrates what you can do with  
11 reasonable inferences and what you may not do. A witness is  
12 testifying. She's on the stand. She testifies she's walking  
13 along, and she's walking along a field. To her right is a  
14 field of barley. Barley is what they make whiskey out of,  
15 green, red tassels, beautiful field of barley. And she notices  
16 that through that field of barley, the barley stalks are all  
17 laying down. Now, she hasn't seen anything. That's her  
18 testimony. And you the jury, you believe that testimony. Now,  
19 from that testimony standing alone, you could infer, it's  
20 logical, common sense, you can infer something went through the  
21 field, because if it had been a windstorm, it would have  
22 knocked all the barley down. But if that's all the testimony  
23 you have, you don't know what went through the field, an  
24 animal, a human, someone on a dirt bike, big, small? You don't  
25 know from that evidence alone. And you may not guess in this

1 case. You may not speculate. You may not pile inference upon  
2 inference. The case must be proved as to each essential  
3 element beyond a reasonable doubt.

4 Let me pause for just a moment and mention two things  
5 that are not evidence, but it's appropriate that I say them to  
6 the attorneys. This case has been well-tried, well-tried for  
7 the government, well-tried for Mr. Hinkel. As you are officers  
8 of the court, you have ably discharged your duty in seeking out  
9 justice here. I don't say that in every case. It's  
10 appropriate. You have seen a well-tried case. Pay no  
11 attention to what I just said. And what I mean by that is, if  
12 you have liked the attorneys' presentation or you warm to their  
13 argument -- now if their argument convinces you or suggests a  
14 reasonable doubt, that's what attorneys are supposed to do, go  
15 ahead. But what I'm saying is just because you react  
16 positively to these attorneys as professionals, that counts for  
17 nothing. Equally, if you don't like something an attorney did,  
18 the way they presented something, don't hold it against either  
19 party. It's unfair. These attorneys are professionals doing  
12:25 20 their job.

21 Now equally important, if you think that I think  
22 anything at all about this case, anything at all about this  
23 case, I most earnestly instruct you to disregard it. And I  
24 tell you as near as I know my own heart, I have no opinion  
25 about this case, no clue to give you. I do not know how this

1 case will come out, as they say. For me even to form such a  
2 view would be improper. I don't talk about that with  
3 Ms. Gaudet or any of the court staff. I've got plenty to do  
4 here to follow the rules of evidence, so I'm not here to give  
5 you any clue. I have no clue to give you. The burden of  
6 deciding the case rests upon the jury of the people, which jury  
7 you are. I will tell you this, and if this is a bias, I  
8 acknowledge it. I believe passionately in the jury system. I  
9 believe that you 14 men and women, the 12 deliberating jurors  
10 and the two alternates, that you will do justice in this case  
11 and that your verdict, whatever that verdict is, will be just  
12 in this case.

13 Now, let's get to it specifically. The verdict slip  
14 will read like this: We, the jury, on the charge before us,  
15 and the charge is that Mr. Hinkel used a means of interstate  
16 commerce to attempt to entice a child to engage in illegal  
17 sexual activity. I have to go over each one of those things.

18 First of all, the government has to prove beyond a  
19 reasonable doubt that the person who answered this  
20 advertisement and these various e-mails back and forth was  
21 Mr. Hinkel, this man, this individual sitting here in court.  
22 We're not talking theoretically about a government sting and  
23 how the government seeks to enforce the laws. We're talking  
24 about this man, his intent, so it's got to be Mr. Hinkel. So  
25 first, did Mr. Hinkel use a facility or means of interstate

1 commerce? Now, why do they have to prove that? Well, they  
2 have to prove it because we're here in the courts of the United  
3 States, not in the courts of our Commonwealth; the United  
4 States. It doesn't have to be -- the internet, by the way, is  
5 a means of communication in interstate commerce. E-mails don't  
6 have to go across state lines from someone in Connecticut to  
7 someone in Massachusetts. Just to use it, since it connects to  
8 so many different places, that is a facility or means in  
9 interstate commerce. So he's got to use that facility.

12:29 10 Mr. Hinkel has got to use a facility or means of interstate  
11 commerce. "In an attempt," now because this was a sting  
12 operation, there is no imaginary Lisa, there is no imaginary  
13 Samantha, but there needn't be. A sting operation, an  
14 undercover operation is perfectly lawful, with limits that I'm  
15 going to get to, a perfectly appropriate way to enforce the  
16 law.

17 But that means that the whatever was legally  
18 impossible because there weren't anyone, a mother named Lisa, a  
19 minor named Samantha. So was there an attempt? An attempt  
12:30 20 means that Mr. Hinkel took some substantial step to accomplish  
21 that which the law forbids, that defined, that beyond a  
22 reasonable doubt, that he took some substantial step to  
23 accomplish what the law forbids. And what does the law forbid?  
24 It forbids using the internet to entice a child to engage in  
25 illegal sexual activity.

1           Now, there's been some talk in the closings here about  
2     coercing the imaginary child. The statute uses the word  
3     "coerce," but it also uses the word "entice." The government  
4     doesn't have to prove coercion. That has the sensitivity, the  
5     nuance of some sort of arm-twisting. No, no. The law doesn't  
6     require them to prove that. But it does require that  
7     Mr. Hinkel entice the minor. What does "entice" mean?  
8     "Entice" means to lure, to persuade, to cause the minor's own  
9     independent will to be transformed so that the minor will do  
12:32 10    what Mr. Hinkel wanted.

11           Specifically, the government -- and now, in a case  
12    like this, where there isn't -- if you believe this all  
13    happened, there is not just communication between what the  
14    government says is Mr. Hinkel and the imaginary child Samantha.  
15    There's communication between what the government says is  
16    Mr. Hinkel and the imaginary mother Lisa. And in such a case,  
17    understand, you've heard testimony that Mr. Hinkel communicated  
18    with undercover officers who were pretending to be the minor's  
19    mother. The government does not have to prove that Mr. Hinkel  
12:32 20    communicated directly with the pretend minor, Samantha. It is  
21    sufficient for the government to prove that Mr. Hinkel  
22    attempted to persuade, induce, entice the minor through his  
23    communication with an adult intermediary, such as the imaginary  
24    parent, Lisa, even though that person was an undercover law  
25    enforcement officer. However, where an adult intermediary is

1 involved, Mr. Hinkel's communication with that intermediary,  
2 the pretend mother, Lisa, must be aimed at transforming,  
3 overcoming the child's independent will, enticing her.

4 In other words, it's not enough for the government to  
5 prove that Mr. Hinkel believed he was communicating with  
6 someone who could arrange for the minor to be produced for  
7 illegal sexual activity or that what he intended was to  
8 persuade, entice, induce the pretend parent to put the child  
9 out for illegal sexual activity. What's charged here is the  
10 communication, perhaps through the pretend parent, must be an  
11 attempt to influence the minor, the imaginary Samantha, to  
12 engage in illegal sexual activity even if the attempt is made  
13 through the intermediary.

14 Use of the internet in an attempt to entice a child.  
15 Under federal law -- and remember, it's always what's in  
16 Mr. Hinkel's mind. If you believe this is Mr. Hinkel, it's  
17 what's in his mind. The federal law that we're talking about  
18 here defines a child as a person under 18 years of age. And  
19 then the last part of it is to engage in illegal sexual  
20 activity.

21 As I said at the beginning of the case, Congress was  
22 very wise here because the states have different statutes. And  
23 so what has got to be in his mind, Mr. Hinkel's mind, is to  
24 induce, to entice the minor, the supposed imaginary child,  
25 Samantha, to engage in illegal sexual activity, in

1 Massachusetts, which we're talking about, where, if you believe  
2 the government's case where things were supposed to happen,  
3 it's illegal to engage in sexual intercourse with a child under  
4 the age of 16. So it's not enough that it be a child under the  
5 law of the United States to make it illegal in Massachusetts,  
6 if what he had in mind was sexual intercourse. And the  
7 government said something -- that they don't have to prove that  
8 what he had in mind was sexual intercourse with the imaginary  
9 Samantha. Yes, they do. That's got to be what you think he  
10 was attempting to do. So a child under the age of 16 cannot  
11 consent. You're not interested in what was being said about  
12 consent. Legally to protect children, a child cannot consent  
13 under the age of 16 to engage in sexual intercourse. Now I  
14 have to define that at the beginning of the trial. Same  
15 definition. Here is how it applies here. Not talking about  
16 touching. He's got to have intended to engage in sexual  
17 intercourse, that's the sexual activity the government has  
18 charged here, with this imaginary minor -- it's an attempt  
19 because there never was an imaginary minor -- is under the age  
20 of 16 here's what the law said is sexual intercourse. The  
21 penetration, however slight, of a woman's vagina or anus by the  
22 penis, the mouth, the tongue rather, a finger or any object  
23 wielded by the man, the penetration of the child's mouth by the  
24 penis of a man. That in the law is sexual intercourse. That's  
25 the illegal sexual activity that is charged, or at least what

1 he was supposed to have had in his mind, under this statute.

2 Using means of interstate commerce to attempt to  
3 entice a child into illegal sexual activity. Well, then the  
4 word "entrapment" has been used here. Entrapment is a  
5 perfectly appropriate limit on government activity. And  
6 because the issue of entrapment does present itself, the  
7 issue -- I'm not saying anything about it, but the issue  
8 presents itself. The government has to prove either one of two  
9 additional things. Even if they prove all the rest, if they  
10 don't prove any of those things, you can stop, return a verdict  
11 of not guilty. But suppose they prove all of that. Well,  
12 there's the issue of entrapment.

13 So let me explain entrapment and be very clear what  
14 the government has to prove. They have to prove one of two  
15 very different things. A person is entrapped when he is  
16 induced or persuaded by law enforcement officers to commit a  
17 crime that he was not otherwise ready and willing to commit.  
18 The law forbids his conviction in such a case. However, law  
19 enforcement agents are permitted to use a variety of methods to  
20 afford an opportunity to a defendant to commit an offense.  
21 They can use undercover agents. They can furnish funds. They  
22 can use informers. They can -- at least what the government  
23 says happened here, they can use false identities. They can  
24 set up what in the common parlance is known as a sting  
25 operation. That is lawful. But for you to find Mr. Hinkel



1 guilty of this crime, you must be convinced that the government  
2 has proven beyond a reasonable doubt that he wasn't entrapped.

3 To show that Mr. Hinkel was not entrapped, the  
4 government must establish beyond a reasonable doubt one of the  
5 two following things, and I'll take them in order. First, the  
6 government has got to prove -- just like everything else,  
7 Mr. Hinkel doesn't have to prove anything. The government has  
8 to prove it -- that the undercover officers did not persuade or  
9 talk Mr. Hinkel into committing the crime. Simply giving  
10 someone an opportunity to commit a crime is not the same as  
11 persuading him. But excessive pressure by the undercover  
12 officers or an undo appeal can be improper.

13 Now, if the government proves that they did not induce  
14 him to commit the crime, you can stop your consideration. But  
15 suppose you're not clear whether they've proved beyond a  
16 reasonable doubt that they, in fact, induced the commission of  
17 the crime. Well, then they have to prove something else. But  
18 only then. Even if they induced it, if they prove -- and this  
19 they have to prove beyond a reasonable doubt -- that Mr. Hinkel  
20 was ready and willing to commit the crime without any  
21 persuasion from the undercover officers, so if he would have  
22 done it anyway, without -- he would have attempted to do it, he  
23 had the mental intent to commit the crime. Then that's not the  
24 propensity, we say, to commit this crime even if the officers  
25 hadn't done whatever you find they did that suggests to you

1 that they were inducing him. Now the government has to prove,  
2 well, he would have done it anyway, had a propensity to do it.  
3 In that circumstance, then they have proved -- either one of  
4 those, they've proved that there's no entrapment. But if they  
5 can't prove either one of those things, I tell you entrapment  
6 at least is an issue in the case, and even if they prove  
7 everything else, he cannot be convicted.

8 We've ordered lunch for when?

9 THE CLERK: 12:30.

10 THE COURT: I want to talk about the mechanics now  
11 because I want you to be comfortable. Lunch should be there,  
12 cafeteria food. We'll tell the alternates, put the alternates  
13 in my lobby. We'll be sure you have lunch. You can take  
14 magazines and books in there and the like. What will happen is  
15 you'll go out, Ms. Gaudet comes back in here. She goes over  
16 the exhibits. She'll bring the exhibits all back to you.

17 Once you go out, you can start deliberation. She'll  
18 also bring back to you a verdict slip. That's my fault. I  
19 should have the verdict slip. It's very straightforward. It  
20 simply says "Guilty" or "Not Guilty," but it has to be a  
21 written verdict slip, and we'll bring that back to you. But  
22 you can start just as soon as we send you out.

23 As I've said, if you have any questions about the law,  
24 just write them out. We'll bring you back in here. I will  
25 answer your questions about the law. We will deliberate or

1 allow you to deliberate close on to 5:00 this afternoon, unless  
2 I get some weather advisory, that that would subject us to less  
3 than safe conditions. But this is supposed to be a light snow,  
4 and I doubt that will happen. I will stop your deliberations  
5 shortly before 5:00 p.m. if you have not reached a verdict, and  
6 we'll come back tomorrow 9:00 and go right on with your  
7 deliberations.

8 We ask you for your verdict. We do not demand it. So  
9 when you get in there and you start deliberating among  
10 yourselves, now you are going to talk among yourselves about  
11 this case, and there's no longer any need to keep your minds  
12 suspended. Now you will be discussing with your fellow jurors,  
13 your fellow judges of the facts, that what is the fair and just  
14 verdict in this case. I do suggest to you that you probably  
15 ought not do this.

16 Well, let me say for starters. Madam forelady, you  
17 don't do all the talking and equally you don't keep your mouth  
18 shut. You're all equal in there. You ought to set things  
19 up -- and that's why it's such a nice conference table. You  
20 can all see each other sitting around it, where each and every  
21 one of you can express your views with the other jurors  
22 listening and commenting on the views expressed.

23 Jury deliberations are the deliberations of all 12 of  
24 you deliberating together, not eight of you talking about the  
25 case and four of you looking out at the snow. You're all going

1 to deliberate together. You can use your notes. Remember,  
2 your notes -- you now take your notebooks back to the jury  
3 room. Your notes are just for you. Don't pass your notes  
4 around to your fellow jurors, because they're not evidence of  
5 anything. They're what you thought you wanted to take down.  
6 They're not evidence. They refresh your memory.

7 The one caution or the one advice I have, don't get  
8 back there and take a straw vote right at the beginning and see  
9 who is for what. The risk in that is that you may think --  
10 since you're all under oath as jurors, if you do that, you are  
11 required by your oath to stick with that view. Now, if you  
12 have strong views about any aspect of this case, by all means,  
13 stick with that.

14 The verdict must be unanimous. That's not ten of you  
15 thinking something and the other two going along so you can go  
16 home. Now, I'm bold to say you're not that kind of jury. You  
17 slogged through the snow. Every trial day, you've been  
18 carefully attentive. No one can go along here. But you can be  
19 persuaded. That's what deliberations are. So I charge you,  
20 listen to the views of your fellow jurors. If those views  
21 persuade you one way or another, genuinely persuade you, that's  
22 fine. That's jury deliberations. When you are ready to return  
23 a verdict, the forelady signs it and dates it, and you've got  
24 to check it, either "Not Guilty" or "Guilty." And you tell the  
25 Court security officer you have a verdict. He'll let

1 Ms. Gaudet know. We'll set things all up in here. Whatever  
2 I'm doing in here, they'll all have to wait, and we'll bring  
3 you into the courtroom. This is how we take a verdict.

4 So you all get in here and we sit down. And  
5 Ms. Gaudet says, "Ladies and gentlemen of the jury, have you  
6 reached a unanimous verdict?" And I assume if you're back with  
7 a verdict rather than a question, you'll say, "Yes"; and she  
8 says, "Pass the verdict slip," it's passed. I'm the first one  
9 who looks at it.

12:48 10 Now, I look at it just to see whether it's logical,  
11 not what the verdict is. But in this case, it's the most  
12 straightforward verdict slip. It's either not guilty or  
13 guilty. But if you haven't checked either one, I won't know  
14 what to do. If you check both of them, I won't know what to  
15 do. But so long as one is checked, I will say, "The verdict is  
16 in order. It may be recorded." She'll ask you all to stand  
17 up, alternates, too. They'll be in these chairs here.

18 If at that time when you stand, each one of you  
19 deliberating jurors is satisfied with the consciousness of your  
12:49 20 duty faithfully performed, you will have done what's required  
21 of you in this case. The word "verdict" comes from two Latin  
22 words. They mean to speak the truth. That is what is asked of  
23 you in this case, to speak the truth.

24 Now, I may have left something out, I may have  
25 misstated something. And before we let you go out to commence

1 your deliberations, the lawyers get a chance to tell me that  
2 now. Counsel?

3 **SIDEBAR:**

4 MS. PIEMONTE-STACEY: Your Honor, just one objection  
5 to the part where you said the government said that they didn't  
6 have to prove that they intended, that the defendant intended  
7 to persuade, induce, or entice to have sex.

8 THE COURT: Right.

9 MS. PIEMONTE-STACEY: In the case of *United States vs.*  
10 *Berk*, *United States vs. Dwinells*, underlined just a portion of  
11 the government's proposed jury instruction on page 14, that it  
12 says that it is not necessary for the government to prove that  
13 the defendant actually intended to have sex as a followup to  
14 this coercion and enticement, and I believe that the  
15 instruction as you gave it indicates that the government had a  
16 burden of proving that the defendant intended to have sex.

17 THE COURT: I'm going to stick with my charge. Your  
18 rights are saved.

19 MS. FISHER: Your Honor, with regard to that charge,  
12:50 20 the first thing is I believe you said something to the effect  
21 of, when you were talking about sexual activity versus some  
22 other kind of activity, what was in his mind. And the problem  
23 is it's not what was in his mind. It's what he was attempting  
24 to persuade her to do. So we'd ask you to clarify that.

25 THE COURT: I'll say that.

1 MS. FISHER: Okay. My other thing is, I object to  
2 your entrapment instruction, and I ask you to give our  
3 instruction, 12 specifically, I'd like to say that your  
4 instruction didn't really detail the psychological  
5 manipulation.

6 THE COURT: I considered it, and your rights are  
7 saved, but I'm not going to. Okay.  
8 (End sidebar.)

9 THE COURT: Both counsel make what is, in essence, the  
10 same point, and I should make this clear. When we're talking  
11 about enticing, persuading, inducing the child, Mr. Hinkel has  
12 to have -- you've got to be satisfied beyond a reasonable doubt  
13 that he used a facility of interstate commerce in an attempt to  
14 entice, lure, persuade the imaginary child to engage in  
15 unlawful sexual activity. This may be a fine point. But the  
16 charge is not that he attempted to actually carry it out. The  
17 charge focuses, yes, entirely on his intent; but what makes it  
18 illegal is to entice, to lure, to persuade a child, to persuade  
19 the child to agree to engage in illegal sexual activity the way  
12:51 20 I described it. Is the supplementary charge satisfactory to  
21 the government?

22 MS. PIEMONTE-STACEY: Yes, your Honor.

23 THE COURT: And saving your rights as to the other  
24 point, Ms. Fisher, is that satisfactory?

25 MS. FISHER: Your Honor, I have one other point.

1 THE COURT: Fine.

2 **SIDEBAR:**

3 MS. FISHER: I just wanted your Honor to instruct them  
4 that it was -- that he has to entice, lure, persuade her to  
5 engage in, what sexual activity under the statute, which is  
6 illegal intercourse --

7 THE COURT: But those words are redundant. I've  
8 defined it. I'm satisfied. Your rights are saved.  
9 (End sidebar.)

12:54 10 THE COURT: We'll bring in -- well, first of all, the  
11 alternates are as follows. Mr. David Wright, Mr. Edward  
12 Henley. Would you come down and take these two chairs.

13 When the jury recesses, you folks can leave. Just  
14 hook a right and then into my little office there. We'll get  
15 you lunch and whatever else you may need. Don't discuss the  
16 case.

17 Very well. Also understand that you can start your  
18 deliberations right away. You'll be interrupted only with  
19 Ms. Gaudet bringing in the exhibits and then bringing in the  
12:55 20 one-page verdict slip as I've instructed you. The jury may  
21 retire and commence their deliberations.

22 THE CLERK: All rise for the jury.  
23 (Jury exits.)

24 THE COURT: Please be seated. Just two things, three  
25 things really. One, the compliment is very sincere.



1 Well-trying case. Triable case and well-trying. It's a  
2 privilege to preside over a case with lawyers so well prepared  
3 and such good advocates.

4 Second thing, if I'm going to stash the alternates in  
5 my lobby there, I have to go back there and take off the robe.  
6 No one has an objection if I do that, as long as I don't talk  
7 about the case. I face this in every case, but I stay away  
8 from potentially deliberating jurors. But I'll need to be in  
9 their presence anyway.

12:56 10 And third, you know my practice. You're free now to  
11 go. Tell Ms. Gaudet where you're going to be. Stay here until  
12 you've counted out the exhibits, but tell her where you're  
13 going to be. If there's a question, I will wait five minutes  
14 for you to answer the question but not longer than that. So  
15 you've got to be around.

16 Truth to tell, I don't have any hearings this  
17 afternoon, so you can use the courtroom as your base. It is my  
18 practice when we get to about ten minutes of 5:00 to bring the  
19 jury in and give them the appropriate instructions. If they  
12:56 20 have to separate, I'm not going to call you for that. Be back  
21 here at ten minutes of 5:00. Naturally, if we get a verdict,  
22 we'll let you know that. Thank you very much. We're recessed.

23 (Recess taken 12:56 p.m.)

24 (Resumed, 2:37, verdict)

25 THE COURT: Madam forelady, members of the jury, has

1 the jury reached a unanimous verdict?

2 JURY FORELADY: Yes.

3 THE CLERK: Please pass the slip.

4 THE COURT: The verdict is in order. It may be  
5 recorded.

6 THE CLERK: Madam forelady, members of the jury,  
7 please stand and listen to the verdict as the Court records it.

8 On the charge of using a facility of interstate  
9 commerce in an attempt to entice a minor to engage in illegal  
02:37 10 sexual activity, we find Paul H. Hinkel guilty.

11 So say you, madam forelady?

12 JURY FORELADY: Yes.

13 THE COURT: So say you, members of the jury?

14 THE JURY: Yes.

15 THE COURT: Please be seated.

16 Ladies and gentlemen, I want to thank you. Not for  
17 your verdict. I thank you for your verdict, whatever your  
18 verdict is. I thank you most sincerely in the care, attention,  
19 promptness, the obvious scrutiny you've given to the case. The  
02:37 20 case is now over. I'd like to come and thank you personally,  
21 but you'll be free to go, and you have the right to say  
22 anything to anyone about anything. You no longer have to not  
23 talk to people about the case. I'm not inviting you to talk,  
24 but you have that free speech right.

25 In one respect, I caution you. There hasn't been

1 press on this case so far as I can see, but it is not the  
2 lawyers or the litigants, they are forbidden by the rules of  
3 court from reaching out to you, contacting you in any way, and  
4 we'd be right on top of that. That won't happen. But it's  
5 possible the press could be in touch with you, and I cannot  
6 tell you not to talk to them, but I strongly urge you not to  
7 say anything about what went on in the jury room. By your  
8 verdict, you have spoken the truth about these matters. Your  
9 internal discussions should be private to the 12 of you. We'll  
02:38 10 recess, and I'll ask you to wait for just --

11 MS. PEACHY: Your Honor, I'm sorry. May the jury be  
12 polled?

13 THE COURT: The jury may be polled. Here's what that  
14 means. We need to know individually whether you affirm the  
15 verdict that the Court has just recorded. And so I'll just  
16 start with the forelady, and then I'll go next juror, next  
17 juror, next juror. If you are individually willing to affirm  
18 the verdict, you say yes. If it's no or you have some question  
19 about it, you say that.

02:39 20 So does the jury affirm the verdict as the court  
21 recorded it? Forelady?

22 JURY FORELADY: Yes.

23 THE COURT: Next.

24 THE JUROR: Yes.

25 THE COURT: Next.

1 THE JUROR: Yes.

2 THE COURT: Next.

3 THE JUROR: Yes.

4 THE COURT: Next.

5 THE JUROR: Yes.

6 THE COURT: Second row.

7 THE JUROR: Yes.

8 THE JUROR: Yes.

9 THE JUROR: Yes.

02:39 10 THE JUROR: Yes.

11 THE JUROR: Yes.

12 THE JUROR: Yes.

13 THE JUROR: Yes.

14 THE COURT: Thank you. The jury may stand in recess.

15 I'll remain on the bench.

16 THE COURT: All rise for the jury.

17 (Jury exits.)

18 THE COURT: Please be seated. Mr. Hinkel will be

19 remanded to the custody of the marshals, but I'd like to

02:40 20 suggest a date of sentencing with you. How about the 5th of

21 May at 2:00 p.m. Government?

22 MS. PIEMONTE-STACEY: Yes, your Honor.

23 THE COURT: And Ms. Peachy?

24 MS. PEACHY: Sorry, your Honor. Yes. That's fine.

25 THE COURT: Thank you. So while he's here, though

1 he'll be remanded, could you go to probation and see if the  
2 process could start today so they can begin the Presentence  
3 Report?

4 MS. PEACHY: Yes, I will try.

5 THE COURT: Thank you. We'll recess.

6 (Whereupon the proceedings  
7 adjourned at 2:40 p.m.)  
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## 1 CERTIFICATE OF OFFICIAL REPORTER

2  
3 I, Kelly Mortellite, Registered Merit Reporter  
4 and Certified Realtime Reporter, in and for the United States  
5 District Court for the District of Massachusetts, do hereby  
6 certify that pursuant to Section 753, Title 28, United States  
7 Code that the foregoing is a true and correct transcript of the  
8 stenographically reported proceedings held in the  
9 above-entitled matter and that the transcript page format is in  
10 conformance with the regulations of the Judicial Conference of  
11 the United States.

12 Dated this 3rd day of June, 2015.

13  
14 /s/ Kelly Mortellite

15 \_\_\_\_\_  
16 Kelly Mortellite, RMR, CRR

17 Official Court Reporter  
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10:33